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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 259.

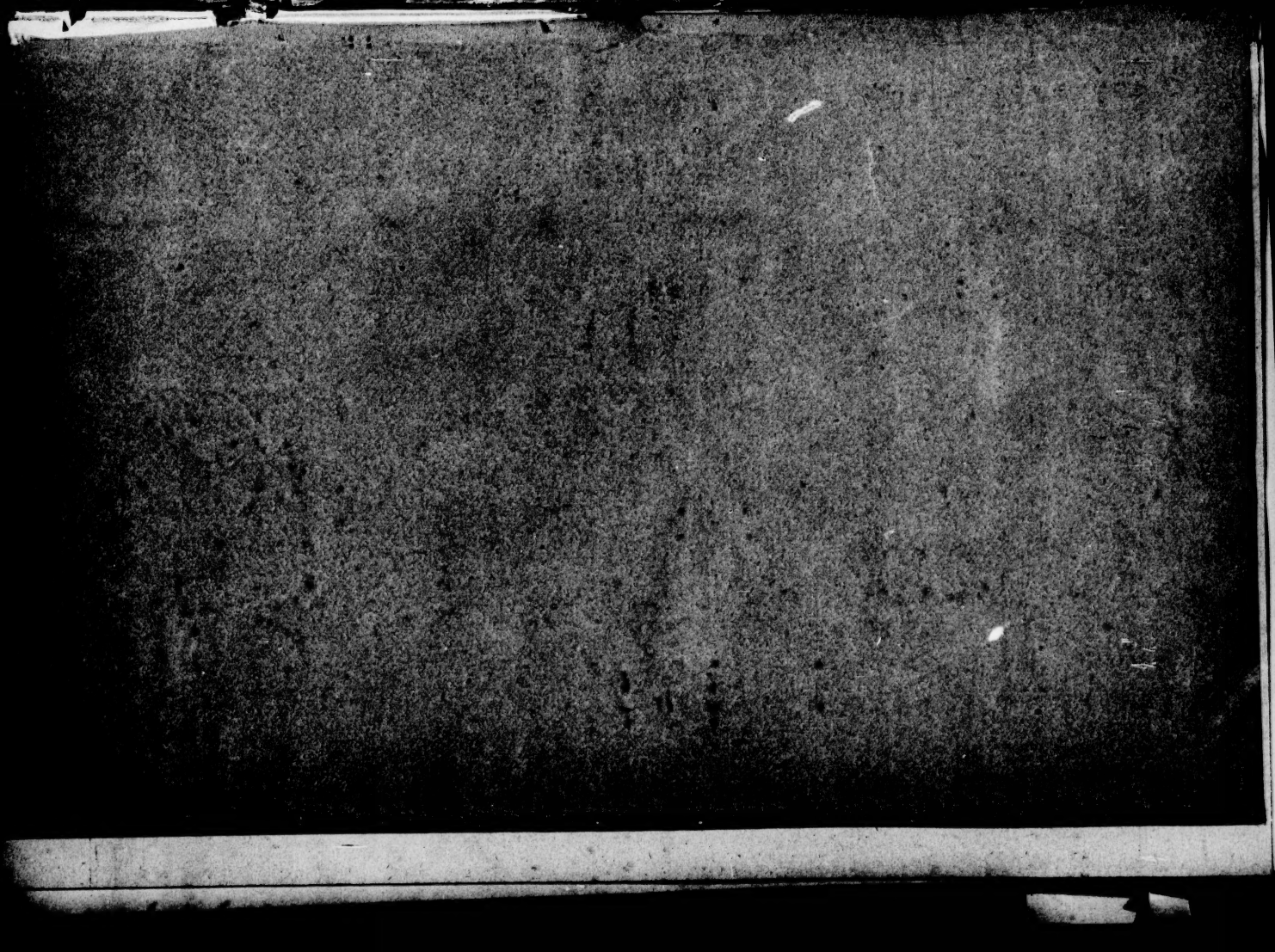
THE TOWN OF OHIO, PLAINTIFF IN ERROR,

vs.

AUGUSTUS FRANK.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 19, 1878.



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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid before the judges thereof, on Friday, the twenty-second day of March, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the one hundred and second.

WILLIAM H. BRADLEY, *Clerk.*

AUGUSTUS FRANK *vs.* THE TOWN OF OHIO. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the first day of June, A. D. 1877, came Augustus Frank, the said plaintiff, by Messrs. Roberts and Hutchinson, his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, his bond for costs, præcipe for a writ of summons against said defendant, and declaration in said entitled cause,
2 which said bond, præcipe, and declaration are respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, July term, A. D. 1877.

AUGUSTUS FRANK *vs.* THE TOWNSHIP OF OHIO. } In assumpsit.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, we hereby agree and stipulate that execution may issue against our property for any costs taxed against him. Dated this first day of June, A. D. 1877.

ROBERTS AND HUTCHINSON,
Att'ys for Pl'ff, 80 *Dearborn st., Chicago.*

(Endorsed:) Filed June 1st, A. D. 1877. Wm. H. Bradley, clerk.

Præcipe.

In the circuit court of the United States, northern district of Illinois, July term, 1877.

3 AUGUSTUS FRANK *vs.* THE TOWNSHIP OF OHIO. } Assumpsit. Damages, $8,000.

Clerk will please issue summons ret'ble as above. This town is in Bureau Co.

ROBERTS AND HUTCHINSON.
80 *Dearborn st., Att'ys for Pl'ff.*

(Endorsed:) Filed June 1, 1877. Wm. H. Bradley, cl'k.

REC. 259—1

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In circuit court, July term, A. D. 1877.

Augustus Frank, who is a citizen of the State of New York, plaintiff, by Roberts and Hutchinson, his attorneys, complains of the Township of Ohio, a body corporate, organized and existing under the laws of the State of Illinois, and located in the northern district aforesaid, the defendant of a plea of trespass on the case on promises: for that whereas, heretofore, to wit, on the first day of January, A. D. 1871, at said northern district, said defendant made its forty-nine certain
4 bonds in writing, numbered respectively, 21, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, for the sum of one hundred dollars each, payable to the Illinois Grand Trunk Railway, or bearer, on the first day of January, A. D. 1876, at the office of the State treasurer in Springfield, Illinois, and signed by William S. Wilson, supervisor, and John W. Forney, town clerk of said town. Plaintiff further avers that all of said bonds are fac-similes of each other except as to the numbers thereof, and true copies except as to said numbers of the copy of number 21, filed with this declaration. Plaintiff further avers that said defendant on the date first aforesaid, at said district, also made, executed, and delivered its three certain other bonds in writing, numbered respectively 81, 89, and 150, for the sum of one hundred dollars each, payable to the Illinois Grand Trunk Railway, or bearer, on the first day of January, A. D. 1877, at the State treasurer's office at Springfield, Illinois, signed by William S. Wilson, supervisor, and John W. Forney, town clerk of said town. And plaintiff avers that said three last-mentioned bonds
5 are fac similes of each other, except as to the numbers thereof, and are each true copies of No. eighty-one, a true copy of which is filed with this declaration.

And plaintiff further avers that said defendant on, &c., first aforesaid, at, &c., aforesaid, made, executed, and delivered its one hundred and thirty-six interest coupons, each for the sum of ten dollars, payable to bearer, in writing: one thereof due January 1st, 1873; sixteen thereof due January 1st, 1874; ninety-six thereof due January 1st, 1876; and the remaining twenty-three thereof due January first, A. D. 1877. And plaintiff further avers that said coupons are all fac similes of each other, and of the copy of one thereof filed with this declaration, in words and figures, except as to dates of maturity and the numbers on their face referring to the bonds to which they respectively belonged. And plaintiff says that said bonds and coupons were, to wit, at the respective dates thereof, delivered by said defendant to said railway, and the said bonds were by said railway endorsed in blank, and together with said coupons sold and delivered to divers persons, and afterwards purchased by plaintiff for a valuable consideration by him paid in due course of business before the maturity thereof, without notice of any defence thereto, if any exists, or any infirmity therein.

And plaintiff avers that upon the said delivery by defendant,
6 as aforesaid, of said bonds and coupons, he, plaintiff, became the owner and bearer thereof, and is still the owner and bearer thereof as aforesaid, whereby defendant became liable to pay plaintiff said

bonds and coupons upon maturity, and being so liable then and there, to wit, the date first aforesaid at said district, promised to pay the same to bearer when due. And plaintiff alleges that said bonds and coupons are long past due and are unpaid. Plaintiff further avers that demand has been made at said State treasurer's office after said bonds and coupons were due for payment thereof, but that payment was refused. Plaintiff avers that he is damaged thereby the sum of eight thousand dollars, wherefore he brings suit.

By ROBERTS AND HUTCHINSON,
His Att'ys.

And for that, whereas, also the said defendant heretofore, to wit, on the first day of May, A. D. 1877, at , in said district, was indebted to the said plaintiff in the sum of eight thousand dollars for goods, wares, and merchandise, sold and delivered by the said plaintiff to the said defendant at its request; and in the further sum of eight thousand dollars for money before that time lent and advanced by plaintiff to defendant at its request; and in the further sum of eight
7 thousand dollars for money then and there paid by plaintiff for use of defendant at its request; and in the further sum of eight thousand dollars for money found to be due and owing from said defendant to said plaintiff on an account then and there had and stated between them; and eight thousand dollars for money had and received by defendant for use of plaintiff; and in the further sum of eight thousand dollars for interest due plaintiff by defendant for large sums forborne before said, &c.

And the defendant being so indebted, afterwards, to wit, on the day and year last aforesaid, at the place aforesaid, in consideration of the premises, respectively, promised the said plaintiff to pay to him the said several moneys last aforementioned on request; yet the defendant, although often requested, to wit, afterwards on the day and year and at the place last aforesaid, has disregarded its promises and has not paid said moneys above mentioned, or any or either of them, or any part thereof, to the damage of the plaintiff of eight thousand dollars; and thereupon he brings suit, &c.

By ROBERTS AND HUTCHINSON,
His Att'ys.

8 COPIES OF INSTRUMENTS SUED ON.

1.—*Copy of bond No.* 21, *due Jan'y* 1*st*, '76.

Number 21.] UNITED STATES OF AMERICA. [100 dollars.

STATE OF ILLINOIS.

Ohio Township railroad bond.

Know all men by these presents that the township of Ohio, in the county of Bureau and State of Illinois, is indebted to the Illinois Grand Trunk Railway, or bearer, in the sum of one hundred dollars lawful money of the United States, which the said township of Ohio promises to pay to the said Illinois Grand Trunk Railway or to the bearer hereof, on the first day of January, in the year one thousand eight hundred and seventy-six, at the office of the State treasurer, in Springfield, Illinois, on the presentation of this bond, with interest thereon from the

first day of January, A. D. 1871, at the rate of ten per cent. per annum, payable annually, at the office of the State treasurer, in Springfield, Illinois, on the first day of January in each year, on the presentation and surrender of the annexed coupons as they severally become due. This bond is issued under and by virtue of the charter of said Illinois Grand Trunk Railway, and amendment thereto, and other laws of the State of Illinois, and in accordance with the vote of the electors of said township at the special election held August 21, A. D. 1869, in accordance with said charter and amendment and laws.

9 In witness whereof the said township of Ohio has caused these presents to be signed by the supervisor and clerk of said township of Ohio this first day of January, one thousand eight hundred and seventy-one.

JOHN W. FORNEY,
Town Clerk.

WILLIAM S. WILSON,
Supervisor.

(Across the face:) $100.
(Stamp.)

With certificate of registry by State auditor on back and endorsement in blank by Illinois Grand Trunk Railway, by its president, A. H. Carter.

2.—*Copy of bond number* 81.

Number 81.] UNITED STATES OF AMERICA. [100 dollars.

STATE OF ILLINOIS.

Ohio Township railroad bond.

Know all men by these presents that the township of Ohio, in the county of Bureau and State of Illinois, is indebted to the Illinois Grand Trunk Railway, or bearer, in the sum of one hundred dollars lawful money of the United States, which the said township of Ohio promises to pay to the said Illinois Grand Trunk Railway, or to the bearer hereof, on the first day of January, in the year one thousand eight hundred and seventy-seven, at the office of the State treasurer in Springfield, Illinois, on the presentation of this bond, with interest thereon from the first day of January, A. D. 1871, at the rate of ten per cent. per annum, payable annually, at the office of the State treasurer in Springfield,
10 Illinois, on the first day of January in each year, on the presentation and surrender of the annexed coupons as they severally become due. This bond is issued under and by virtue of the charter of the said Illinois Grand Trunk Railway and amendment thereto, and other laws of the State of Illinois, and in accordance with the vote of the electors of said township at the special election held August 21, A. D. 1869, in accordance with said charter and amendment and laws.

In witness whereof the said Township of Ohio has caused these presents to be signed by the supervisor and clerk of said township of Ohio this first day of January, one thousand eight hundred and seventy-one.

JOHN W. FORNEY,
Town Clerk.

WILLIAM S. WILSON,
Supervisor.

(Across the face:) $100.
(Stamp.)

Endorsed on back with certificate of registry by State auditor and endorsement in blank of Grand Trunk Railway, by its president, A. H. Carter.

Copy of coupon 21.

$10.] Ohio Township railroad bond. [No. 21

Interest warrant.

Supervisor of the township of Ohio pay to bearer, January 1st, 1876, ten dollars at the office of the State treasurer, Springfield, Illinois.

J. W. FORNEY,
Town Clerk.

W. S. WILSON,
Supervisor.

(Across the face:) 5.

11 *Copy of coupon* 81.

$10] Ohio Township railroad bond. [No. 81.

Interest warrant.

Supervisor of the township of Ohio pay to bearer, January 1st, 1877, ten dollars at the office of the State treasurer, Springfield, Ohio.

J. W. FORNEY,
Town Clerk.

WM. S. WILSON,
Supervisor.

(Across the face:) 6.

a/c *under common counts.*

The Township of Ohio to Augustus Frank, Dr.

To goods, wares, and merchandise sold and deliv		$8,000 00
To money lent and advanced		$8,000 00
" " paid to def.'s use		$8,000 00
" " due on a/c stated		$8,000 00
" " had and rec'd		$8,000 00
" " due for interest		$8,000 00

(Endorsed:) Filed June 1, 1877. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 3rd day of July, A. D. 1877, in the July term of said court, in the record of the proceedings thereof in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

AUGUSTUS FRANK
vs.
THE TOWNSHIP OF OHIO. } Assumpsit.

12 On motion of the defendant, by his attorney, the time to plead herein is extended thirty days.

Afterwards, to wit, on the 27th day of July, A. D. 1877, in said July

term of said court, in the record of the proceedings thereof in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

AUGUSTUS FRANK
vs.
THE TOWNSHIP OF OHIO. } Assumpsit.

On motion of the defendant, by A. C. Story, esq., its attorney, the time for the defendant to plead is further extended to the first Monday of September next.

Afterwards, to wit, on the 3rd day of September, A. D. 1877, said defendant, by its attorneys, filed in said clerk's office its demurrer to the declaration of said plaintiff in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer to declaration.

United States circuit court, northern district of Illinois.

AUGUSTUS FRANK
v.
THE TOWN OF OHIO. }

13 And the said defendant, by J. J. Herron and A. C. Story, her attorneys, come and say that the said declaration of the said plaintiff is insufficient in law; wherefore judgment is prayed.

J. J. HERRON AND
A. C. STORY,
D'f't's Att'ys.

(Endorsed:) Filed Sept. 3rd, 1877. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 15th day of December, A. D. 1877, in the adjourned October term of said court in the record of the proceedings thereof, in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

AUGUSTUS FRANK
v.
THE TOWNSHIP OF OHIO. } Assumpsit.

Now come the parties by their attorneys and submit to the court the demurrer of the defendant to the declaration herein, and the court takes the same under advisement.

Afterwards, to wit, on the 7th day of January, A. D. 1878, in the December term, A. D. 1877, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

14 AUGUSTUS FRANK
v.
THE TOWNSHIP OF OHIO. } Assumpsit.

Now comes the plaintiff by his attorney and confesses the demurrer

of the defendant to the declaration herein, and on motion of said attorney leave is given the plaintiff to amend his declaration, which amendment is now filed, and on motion of the plaintiff by his attorney the defendant is hereby ruled to plead to the declaration as amended in five days.

And on the same day, to wit, the 7th day of January, A. D. 1878, said plaintiff by his attorney filed in said clerk's office his amendments to his declaration in said entitled cause, which said amendments are in the words and figures following, to wit:

Amendments to declaration.

In the circuit court of the United States, nor. dis. Ills.

AUGUSTUS FRANK
vs.
THE TOWNSHIP OF OHIO.

And now comes the plaintiff by Roberts and Hutchinson, his attorneys, and by leave of court makes the following amendments to the declaration, viz:

15 On the sixth line from the top, on first page, after the words "complains of," insert the words "the Town of Ohio" instead of the words "the township of Ohio;" and after the word "defendant" on the twelfth and twenty-sixth lines from the top, same page, insert the words "by the name and description of the township of Ohio;" and after the word "defendant," on second page, seventh line from top, insert the words "by the name and description of the township of Ohio."

ROBERTS AND HUTCHINSON,
Pl'ff's Att'ys.

(Endorsed:) Filed Jan'y 7, 1878. William H. Bradley, cl'k.

Afterwards, to wit, on the 12th day of January, A. D. 1878, said defendant, by its attorneys, filed in said clerk's office its pleas in said entitled cause, which said pleas are in the words and figures following, to wit:

Pleas.

UNITED STATES OF AMERICA.
Northern dist. of Illinois:

In the circuit court. July term, A. D. 1877.

AUGUSTUS FRANK
vs.
THE TOWN OF OHIO.

16 And the said defendant, by J. J. Herron and A. C. Story, its att'ys, comes and defends the wrong and injury when, etc., and says that said town of Ohio did not undertake or promise in manner and form as the said plaintiff has in his declaration thereof complained against said town, and prays that this may be enquired of by the country, &c.

By J. J. HERRON AND
A. C. STORY,
Def'd's Att'ys.

NORTHERN DIST. OF ILLINOIS,
Bureau County, ss:

Daniel P. Smith, being duly sworn, says he is the supervisor of said town, and the foregoing plea is true in substance and fact as he verily believes; also that the alleged endorsements upon the documents and papers sued upon herein are not the genuine endorsements of the parties respectively by whom they purport to be made, as deponent verily believes.

D. P. SMITH.

Sworn to this 19th day of July, A. D. 1877, before me.
[SEAL.] D. H. SMITH,
Clerk of Circuit Court of Bureau Co., Illinois.

And for a further plea in this behalf said defendant in like manner comes and says actio non, because she says that the several
17 supposed causes of action, and each thereof, in said declaration mentioned in each of the special counts thereof, arise solely from, depend upon, and consist only of the supposed bonds and coupons aforesaid, and are not other or different in any manner. That said bonds and coupons and each thereof were and are void, and were executed without right or lawful authority by said alleged town officers to execute or issue the same on behalf of this defendant.

That the said pretended charter of said Illinois Grand Trunk Railway and the alleged amendments thereto recited in said alleged bonds were not in fact and never had become laws of the State of Illinois, or of any binding force therein, because defendant says that the purported act of the general assembly of the State of Illinois purporting to go into force or effect March 25th, 1869, entitled "An act to amend an act incorporating the Illinois Grand Trunk Railway" was and is merely a bill introduced in the house of representatives of said general assembly at its session in 1869 by that title and so passed by that body; that said bill was never reported to the senate of that body from said house, nor was any bill of that title either introduced into or passed by the senate of said general assembly at its session in said year.

18 That by the constitution of said State of Illinois existing and in force at the time when, &c., every private local bill must have a title and the purport and object of said bill shall be expressed therein, and also every bill before the same could become a law was required to be passed by the votes of a majority of the members of each house thereof taken by ayes and noes and recorded upon the records thereof.

And although the said pretended amendment is printed with the private laws of said session of said general assembly, yet the defendant in fact says that by reason of the facts aforesaid said bill never became a law, and no authority could be or was given thereby by the inhabitants of said town of Ohio to hold any election, or to any of the officers thereof to call any election for any such purpose, or to bind the faith or credit of said town by the issue of any bonds or coupons, but the said pretended bonds and the coupons thereto attached, in said counts of said declaration mentioned, and each thereof, were and are absolutely null and void and so remain, to wit, at the district aforesaid, and this the defendant is ready to verify, wherefore judgment is prayed, etc.

By J. J. HERRON AND
A. C. STORY,
Def't's Att'ys.

19 And for a further plea in this behalf the defendant in like manner comes and says actio non, because she says that the said pretended bonds and coupons in the special counts of said declaration mentioned were issued after the constitution of the State of Illinois of 1870 went into effect, to wit, on or about the 8th day of August, A. D. 1870. That although an election had been called and vote taken, authorising the officers of said town to subscribe for certain shares of the capital stock of or aid to The Illinois Grand Trunk Railway prior to the adoption of said constitution, yet the said last named corporation had refused to accept the terms of said vote and subscription and had notified said township and its officers of such refusal, whereby the said action of the inhabitants of said township in voting for a subscription to the stock of said company and issuing bonds therefor, and all authority conferred upon said inhabitants or its officers by law had been exercised, ceased and determined before such refusal of said Illinois Grand Trunk Railway to accept such subscription, and the directors of said last named corporation never did accept the said subscription so voted by said township of Ohio, but the said William S. Wilson and John W.

20 Forney, whose names appear attached to said pretended bonds and coupons without authority of law, acting in collusion with certain pretended officers of said corporation, without the knowledge or authority of said inhabitants, fraudulently pretended to make such subscription and fraudulently issued and delivered certain papers purporting to be the bonds and coupons of said township of Ohio; and defendant further says, that said corporation called The Illinois Grand Trunk Railway, the payee named in said bonds, never had any legal or corporate existence and never received or authorised the reception of said pretended bonds or coupons or any thereof, and never in fact endorsed or put the same or any thereof into circulation, and neither the defendant or said corporation or any other person on its or their behalf ever received, nor did the plaintiff or any other person on his behalf ever pay, any consideration whatsoever for said pretended bonds or coupons or any of them, or become the legal holders thereof or any of them, but the said pretended bonds and coupons or warrants were procured by fraud and without any consideration or lawful authority therefor and were absolutely null and void; of all which the said plaintiff, at the said several times when, &c., had due notice, and this the defendant is ready to verify; wherefore judgment is prayed, &c.

By J. J. HERRON and
A. C. STORY,
Def't's Attys.

21 And for a further plea in this behalf, the said defendant in like manner comes and says actio non, because she says that the said purported act amendatory of the charter of the Grand Trunk Railway under which the said bonds and coupons in the declaration purport to have been issued and authorized was never passed by the Senate of the State of Illinois, and never had a title in which its purport or object was expressed, and the vote thereon was not taken by ayes and noes recorded upon the records thereof, nor was the same voted for by a majority of the members of each company, the legislature of said State in manner and form as was required by the constitution of said State of Illinois, existing and in force therein at the times when, &c., whereby said town and its officers had no authority to issue said bonds or coupons, and the same were and are void and of no effect, to wit, at the

district aforesaid, and this the defendant is ready to verify, wherefore she prays judgment, etc.

By J. J. HERRON AND
A. C. STORY,
Def't's Att'ys.

And for a further plea in this behalf, the said defendant in like manner comes and says actio non, because she says that an election was called and held under and pursuant to the provisions of an act of
22 the legislature of the State of Illinois, approved March 25th, 1869, in said town of Ohio, to wit, on the 25th day of June, A. D. 1870, upon the question of issuing forty thousand dollars of bonds and subscribing for one hundred shares of the stock of the Grand Trunk Railway in the name of said town of Ohio, at which said election the votes cast in favor of said bonds, and subscription were fifty-eight, and those cast against the proposition were sixty-eight, and the result of said election was then and there announced to be against said bonds and subscription which is the only authority for the issuance of the said bonds and coupons in said declaration mentioned, and so defendant says the said alleged bonds and coupons were issued without authority and were and are void and not binding on said town, and this the defendant is ready to verify, wherefore she prays judgment, &c.

By J. J. HERRON AND
A. C. STORY,
Def't's Att'ys.

(Endorsed:) Filed Jan'y 12, 1878. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 15th day of January, A. D. 1878, said plaintiff, by his attorneys, filed in said clerk's office his similiter
23 and demurrer to the first, second, third and fourth special pleas of said defendant, which said similiter and demurrer is in the words and figures following, to wit:

Similiter and Demurrer.

In the circuit court of the United States, northern district of Illinois.

AUGUSTUS FRANK
vs.
THE TOWN OF OHIO. } Similiter and demurrers.

And now comes the plaintiff, by Roberts and Hutchinson, his attorneys, and as to the plea of the defendant in which it puts itself upon the country, doth the like, &c.

And as to the first, second, third and fourth special pleas of the defendant, plaintiff says precludi non, because he says that each of the said pleas is insufficient in law, and defendant hereby demurs thereto separately, and prays judgment of each of the said pleas.

And for special cause of demurrer thereto, plaintiff says that each of said pleas amounts to the general issue.

ROBERTS AND HUTCHINSON,
Att'ys for Pl'ffs.

(Endorsed:) Filed Jan'y 15, 1878. Wm. H. Bradley, clerk.

24 On the same day, to wit, the 15th day of January, A. D. 1878, in the said December term, A. D. 1877, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

AUGUSTUS FRANK
v.
THE TOWN OF OHIO. } Assumpsit.

The demurrer of the plaintiff, to the first, second, third and fourth special pleas herein, having this day been submitted to the court, and the court being now sufficiently advised thereon, sustains said demurrer, because the matter contained in said special pleas can be given in evidence under the plea of the general issue so far as it can constitute a defence.

Afterwards, to wit, on the 17th day of January, A. D. 1878, said parties, by their attorneys, filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

In cir. c't U. S., nor. dist. Ill's.

AUGUSTUS FRANK
v.
THE TOWN OF OHIO.

25 It is stipulated that this cause may be passed to the second call of the calendar, that at the trial defendant will admit that the bonds and coupons sued on are signed by the genuine signatures of the then supervisor and town clerk of said town of Ohio.

And, further, defendant will accept one day's notice if requested by plaintiff, and take the deposition of Geo. O. Ide, or any other witness, to prove the signatures of the endorsers on said bonds or coupons.

January 17, 1878.

J. J. HERRON,
A. C. STORY,
Df't's At'ys.
ROBERTS AND HUTCHINSON,
Pl'ff's Att'ys.

(Endorsed:) Filed Jan'y 17, 1878. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 8th day of February, A. D. 1878, in the December term, A. D. 1877, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

AUGUSTUS FRANK
v.
THE TOWN OF OHIO. } Assumpsit.

26 This cause having this day been called for trial, now comes the plaintiff, by his attorney, and upon issue joined upon the plea herein, on motion of the plaintiff's attorney, thereupon come a jury of good and lawful men, to wit, James H. Farrell, Ira C. Mosier, Albert Evans, Nathaniel Vose, H. W. Thornton, Elias Braman Thornton, G.

Haines, W. R. Guild, C. A. Baker, Charles P. Lyman, John H. Bowers, and William Soper, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing the evidence on the part of the plaintiff and receiving the instructions of the court, the jury returned the following verdict, to wit: We the jury find the issue for the plaintiff, and assess his damages to the sum of nine thousand five hundred and four dollars and forty cents.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of nine thousand five hundred and four dollars and forty cents, his damages so as aforesaid assessed, together with his costs and charges in this behalf expended, amounting to the sum of dollars and cents.

Afterwards, to wit, on the 11th day of February, A. D. 1878, said defendant, by its attorney, filed in said clerk's office its motion for a
27 new trial in said entitled cause, which said motion is in the words and figures following, to wit:

Motion for a new trial.

U. S. c. court, n. dist. Ills.

AUGUSTUS FRANK }
vs. }
TOWN OF OHIO. }

And the said defendant, by its attorney, A. C. Story, suggests the death of Hon. J. J. Herron, one of the attorneys for defendant of record in this case, and moves the court to set aside the verdict and judgment in this cause, and for a new trial thereof upon reasons and affidavits hereafter to be filed.

Feb'y 11, 1878.

ALLAN C. STORY,
Att'y and of Counsel for Def't.

(Endorsed:) Filed Feb'y 11, 1878. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 18th day of February, A. D. 1878, in the said December term, A. D. 1877, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

28 AUGUSTUS FRANK }
vs. } Assumpsit.
THE TOWN OF OHIO. }

The defendant having heretofore filed its motion to set aside and vacate the judgment and verdict entered herein on the eighth instant and for a new trial of this cause, and submitted the same to the court upon affidavit filed, and the court having considered and being now sufficiently advised thereon, overrules said motion.

Afterwards, to wit, on the 25th day of February, A. D. 1878, in the said December term, A. D. 1877, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

AUGUSTUS FRANK
v.
THE TOWN OF OHIO. } Assumpsit.

Now come the parties, by their attorneys, and on motion of the defendant, by its attorney, leave is given it to make its defence herein before the court, a jury being waived, the judgment to stand as security.

Afterwards, to wit, on the 12th day of March, A. D. 1878, said
29 parties, by their attorneys, filed *filed* in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

In the circuit court of the United States, northern district of Illinois.

AUGUSTUS FRANK, PL'FF,
vs.
THE TOWN OF OHIO, DEF'T. } Assumpsit.

It is hereby stipulated by and between the undersigned, attorneys for the plaintiff and defendant above named, that this cause shall be submitted to the court, the Hon. Henry W. Blodgett, without a jury, for trial, and the judgment rendered therein shall be binding upon the parties aforesaid as if upon the verdict of a jury, subject to the right of either party to prepare bill of exceptions and sue out a writ of error to review the record and proceedings herein, as in other cases.

M'ch 12, 1878.

JAS. H. ROBERTS,
Att'y for Pl'ff.
ALLAN C. STORY,
Att'y for Def't.

(Endorsed:) Filed March 12, 1878. Wm. H. Bradley, cl'k.

On the same day, to wit, the 12th day of March, A. D. 1878,
30 in the adjourned March term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

AUGUSTUS FRANK
v.
THE TOWN OF OHIO. } Assumpsit.

Now, come the parties by their attorneys, and, under the order entered herein on the twenty-fifth day of February last, giving the defendant leave to make its defence to this suit upon issue joined by agreement of the parties as per stipulation filed, they waive the intervention of a jury and for trial put themselves upon the court; and, after hearing the evidence and the arguments of the defendant's counsel, the court takes the same under advisement.

Afterwards, to wit, on the 22d day of March, A. D. 1878, there was filed in said clerk's office the special finding of said court in said entitled cause, which said special finding is in the words and figures following, to wit:

Special finding.

United States circuit court, northern district of Illinois.

AUGUSTUS FRANK
v.
TOWN OF OHIO.

31 The above-entitled suit having, by agreement of parties in writing, duly filed, been submitted to the court for trial without the intervention of a jury, the following facts are specially found from the evidence given on said trial:

First. That the bonds and coupons described in plaintiff's declaration were duly issued by said defendant town, and delivered to the Illinois Grand Trunk Railway in payment of a subscription to the capital stock of said railway made by said town. That said subscription was made in pursuance of a vote of a majority of the voters of said town at an election duly called and held therein on the 21st day of August, 1869, pursuant to the provisions of an act of the general assembly of the State of Illinois, approved March 25th, 1869, entitled "An act to amend an act to incorporate the Illinois Grand Trunk Railway."

Second. That said act was duly and constitutionally passed by the general assembly of the State of Illinois, as shown by the journals of the house and senate of said general assembly.

Third. That said bonds and coupons were issued and delivered to said railway on or about the 6th day of January, 1871, in payment of said subscription, and were by said railway, before the 12th day of
32 said January, sold and delivered for value and in good faith to James F. Joy, and the proceeds of said bonds were applied to the construction of the railroad of said Illinois Grand Trunk Railway through said town; and that the plaintiff is the holder of said bonds and coupons for value and without any actual notice of any defence whatever against them, and that said bonds and coupons remain unpaid.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed March 22, 1878. Wm. H. Bradley, cl'k.

On the same day, to wit, the 22d day of March, A. D. 1878, in the said adjourned March term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district , is the following entry, to wit:

AUGUSTUS FRANK
vs.
THE TOWN OF OHIO. } Assumpsit.

Now comes the plaintiff, by James H. Roberts, esq., his attorney, and, the court having considered and being now sufficiently advised upon the defence made to this suit by the defendant, now orders that the judgment and verdict entered herein on the eighth day of Feb-
33 ruary last be set aside and vacated, and now, upon issue joined herein by agreement of the parties by their attorneys, as per stipulation filed, they waive the intervention of a jury, and for trial put themselves upon the court, and upon the evidence and arguments herein the court finds the issue for the plaintiff and assesses his damages to the sum of nine thousand five hundred and seventy-six dollars and twenty-nine cents, as per special finding filed herein.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of nine thousand five hundred and seventy-six dollars and twenty-nine cents, his damages so as aforesaid assessed, together with his costs and charges in this behalf expended, amounting to the sum of forty eight dollars and five cents.

And on the same day, to wit, the 22d day of March, A. D. 1878, on the trial of said cause, the following exceptions were taken and allowed by the court and made of record in said entitled cause, to wit:

Bill of exceptions.

AUGUSTUS FRANK
vs.
THE TOWN OF OHIO. } Ass't.

Bill of exceptions.

34 Be it remembered that on the 22nd day of March, A. D. 1878, the same being one of the judicial days of the March term of this court, A. D. 1878, said parties came again by their attorneys, and said cause came on for trial before honorable Henry W. Blodgett, sitting as circuit judge, to whom the issues herein were then and there submitted by stipulation of the parties, a jury being waived; whereupon the plaintiff, to maintain the issue on his part, offered in evidence the bonds mentioned in the declaration, each of which bonds, except its number, was in the words and figures following, that is to say:

Number 35.] UNITED STATES OF AMERICA. [100 dollars.

STATE OF ILLINOIS.

Ohio Township railroad bond.

Know all men by these presents that the township of Ohio, in the county of Bureau, and State of Illinois, is indebted to The Illinois Grand Trunk Railway, or bearer, in the sum of one hundred dollars, lawful money of the United States, which the said township of Ohio promises to pay to the said Illinois Grand Trunk Railway, or to the bearer hereof, on the first day of January, in the year one thousand eight hundred and seventy-six, at the office of the State treasurer, in Springfield, Illinois, on the presentation of this bond, with interest thereon from the
35 first day of January, A. D. 1871, at the rate of ten per cent. per annum, payable annually at the office of the State treasurer, in Springfield, Illinois, on the first day of January in each year, on the presentation and surrender of the annexed coupons as they severally become due.

This bond is issued under and by virtue of the charter of said Illinois Grand Trunk Railway, and amendment thereto, and other laws of the State of Illinois, and in accordance with the vote of the electors of said township, at the special election held August 21, A. D. 1869, in accordance with said charter and amendment and laws.

In witness whereof the said township of Ohio has caused these pres-

ents to be signed by the supervisor and clerk of said township of Ohio, this first day of January, one thousand eight hundred and seventy-one.

JOHN W. FORNEY,
Town Clerk.

WILLIAM S. WILSON,
Supervisor.

(Across the face:) $100.
(Stamp.)

(Endorsed:) The Illinois Grand Trunk Railway, by A. H. Castle, president.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, April 15th, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State
36 of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

Said plaintiff also then and there offered in evidence the coupons mentioned in the declaration, each of which, except its number, was in the words and figures following, that is to say:

$10.] OHIO TOWNSHIP. [No. 81.

Railroad bond.

Interest warrant.

Supervisor of the township of Ohio, pay to bearer January 1st, 1877, ten dollars, at the office of the State treasurer, Springfield, Illinois.

J. W. FORNEY,
Town Clerk.

WM. S. WILSON,
Supervisor.

(Across the face:) 6.

Each of said bonds and coupons respectively was objected to by counsel for the defendant in apt time upon the ground—

First. That the same were not signed by the corporate authorities of said town.

37 It was conceded that the signatures thereto were the genuine signatures of the supervisor and town clerk of said town.

Second. Said coupons are not shown to have been presented to the proper officer, or demand of payment made thereon, and notice given to the drawer before suit.

Third. Said coupons are detached from and not annexed to any bond, nor is the absence of such bond accounted for, and the same are not negotiable paper proper to base an action upon.

Fourth. Said coupons were never endorsed, and are not negotiable by delivery.

But the court overruled each and every the said objections, and received the said bond and coupons, and each thereof, in evidence, to which and each of said several decisions the said defendant's counsel did then and there duly and separately except.

Plaintiff's counsel also offered evidence tending to show that the endorsement appearing on each of said bonds was in the handwriting of A. H. Castle, who was the acting president of the Illinois Grand Trunk Railway in January, 1871, of which L. C. Ellsworth was the secretary and treasurer; that said endorsement was made in Chicago early in the beginning of 1871; that said bonds were signed some time in Au-
38 gust of 1870 by said supervisor and town clerk, and handed to one John Warfield, of Quincy, to be delivered to the said Illinois Grand Trunk Railway when the railroad was completed, and were by him delivered to said railway January 6th, 1871, who transferred them to James F. Joy, who bought them on his own account for value, and the proceeds of the sale thereof were employed in building said railway, and that said Joy was then the president of the Chicago, Burlington and Quincy Railway Company.

Whereupon plaintiff rested his case, and the defendant offered evidence tending to show that a bill was filed on the 13th day of January, 1871, in the circuit court of Bureau County, State of Illinois, by James Ross and three others, residents and tax payers of said town of Ohio, against said Wilson, supervisor, and said Forney, town clerk, John Warfield, the Illinois Grand Trunk Railway Company and the Chicago, Burlington and Quincy Railway Company, setting forth an attempt by certain inhabitants to hold an election in said town for the purpose of authorizing a subscription of forty thousand dollars by said town authorities to the stock of said Illinois Grand Trunk Railway on the 21st day of August, 1869, (the same election in said bonds mentioned,) alleging that
39 no notice of said election was given; that no registry of votes was made or used at said election, and that the same was not carried by a majority of votes cast; that said company last named was not organized until after said pretended election had been held, namely, January, 1870; that said company refused to accept said subscription so voted at said special election of August 21st, 1869, and so notified said town officers of said town of Ohio, and submitted a different subscription, to be voted for by said town, and at their request another election was held in said town in June, 1870, at which time and place a majority of said inhabitants of said town voted against said subscription.

That said company never signified its acceptance of said subscription of $40,000 voted at said first election until some time in December, 1871, when the bonds were fraudulently issued by said Forney and Wilson to one John Warfield in escrow, to be delivered to said Illinois Grand Trunk Railway Company, and by said company to the Chicago, Burlington and Quincy Railway Company, when said railroad should be completed through said town of Ohio, and said complainants feared, by fraud and collusion between said defendants and town officers named, said bonds would pass into the hands of innocent purchasers, and praying
40 an injunction restraining said parties from executing, delivering, or negotiating said bonds.

That on the same 13th day of January, 1871, a writ of injunction as well as summons issued out of said court and was served on the defendants aforesaid as follows: January 13th, 1871, on said town clerk and supervisor; January 17th, 1871, on said John Warfield and said Illinois

Grand Trunk Railway Company; January 13th, 1871, on the Chicago, Burlington and Quincy Railway Company.

Plaintiff offered in evidence the remainder of the same record, by which it appears that on the 27th of March, 1871, defendants filed their answer to said bill, wherein it was alleged, among other things, that said Illinois Grand Trunk Railway had been duly incorporated February 28th, 1867, with power to construct a railway through said town of Ohio; that by an act of the legislature of Illinois, approved March 25th, 1869, said town was authorized to subscribe to the capital stock of said railway upon the terms therein mentioned and issue bonds therefor; that by an election duly held on the 21st of August, 1869, a majority of all the legal voters in said town voted to subscribe $40,000.00 to the said capital stock; that pursuant thereto said subscription was made and accepted by said railway.

41 That said bonds were duly executed and delivered to John Warfield, as custodian thereof, to be by him delivered to said railway upon the compliance by said railway with the terms of said subscription. That about January 6th, 1871, said railway having complied with the said terms, said bonds and coupons were by said Warfield delivered to said railway prior to the filing of said bill and the granting of said injunction. That said subscription was made and said bonds and coupons executed and delivered in good faith without any fraud as charged. That said Chicago, Burlington and Quincy Railway Company had not then, nor ever, any interest in said bonds or coupons. That on filing said answer said injunction was dissolved by said circuit court, and on complainant's motion said bill was then dismissed.

Defendant's counsel also offered evidence tending to show that a special election was held in said town of Ohio, August 21st, 1869, but no registry of voters was made or kept prior thereto. Said election was by ballot and for the purpose of providing for subscription to the capital stock of the Illinois Grand Trunk Railway four hundred (400) shares, of $100 each, to issue bonds of said town therefor to the number

42 four hundred, of $100 each, bearing interest at ten per cent. per annum. Said bonds to be due and payable one-fifth five years after date, and one-fifth in each and every succeeding year thereafter, according to their numerical order, until all were paid—bonds to be issued and delivered only on the express condition that said railway should be completed and the cars running thereon for the purpose of conveying passengers and freight from Mendota through said town of Ohio on old grade, and that the depot be located at the old site selected by the old Illinois Grand Trunk Railway Company. That said election was declared in favor of said proposition.

That said company never accepted said proposition as voted, but afterwards caused a new election to be called, which was held on June 25th, 1870. After registry made and notice given, pursuant to law, at which it was voted 58 ayes to 48 nays, that said town subscribed $40,000 $\frac{00}{100}$ to the capital stock of the Illinois Grand Trunk Railway, to be paid for in the bonds of said township coming due 5, 6, 7, 8, 9, and 10 years from date of issue, bearing interest at rate of ten per cent. per annum, payable annually. That there should be no call upon said township to issue said bonds, except five per cent. thereof, to be used for the purpose hereinafter set forth until sufficient stock has

43 been subscribed to grade, bridge, and tie that portion of said road lying between the town of Mendota, in La Salle County, Illinois, and the town of Prophet's Town, in Whiteside County, Illinois, nor until a contract has been entered into with the Chicago, Burlington

and Quincy Railway Company, or some other responsible capitalists, to take or cause the first mortgage bonds of said Illinois Grand Trunk Railway Company to be sold for at least twelve thousand dollars per mile, in order to procure the necessary iron and material to finish up said portion of said road; said five per cent. to be used in the purchase of that portion of the road-bed of old Illinois Grand Trunk Railway lying between said town of Mendota and the town of Albany, in Whiteside County; said bonds not to be issued until said road was located through said township, with a depot located within said town of Ohio; said bonds to be called for pro rata with other township subscriptions, as the requirement of the work demands. Said vote for subscription not to be binding upon said township for a longer period than three years, unless said conditions are fulfilled on part of said company.

Defendant's counsel then offered in evidence the following copy of the journals of the senate and house of representatives of the State of Illinois, and certificate of George H. Harlow, secretary of state,
44 thereto attached, in the words and figures following; that is to say:

House journal.

* * * * * * *

MONDAY, *January* 11, 1869.

* * * * * * *

Mr. Dinsmoor introduced a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

Which was read a first time and ordered to a second reading.

On motion of Mr. Dinsmoor, the rule was dispensed with, the bill read a second time, and referred to the committee on railroads.

* * * * * * *

WEDNESDAY, *February* 3, 1869.

* * * * * * *

Mr. Bailey, from the committee on railroads, to which was referred a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" reported the same back and recommended its passage.

The report of the committee was concurred in and the bill ordered to a third reading.

* * * * * * *

SATURDAY, *February* 6, 1869—two o'clock p. m.

* * * * * * *

45 A bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" was read a third time, and the question being "Shall this bill pass?"

It was decided in the affirmative. Yeas, 65; nays, 2.

Those voting in the affirmative are—

Messrs. Bond	Messrs. Gilmore	Messrs. Payne
Botwell	Green	Perry
Bradshaw	Gundlach	Phelps
Brookhart	Halley	Porter

Grand Trunk Railway Company; January 13th, 1871, on the Chicago, Burlington and Quincy Railway Company.

Plaintiff offered in evidence the remainder of the same record, by which it appears that on the 27th of March, 1871, defendants filed their answer to said bill, wherein it was alleged, among other things, that said Illinois Grand Trunk Railway had been duly incorporated February 28th, 1867, with power to construct a railway through said town of Ohio; that by an act of the legislature of Illinois, approved March 25th, 1869, said town was authorized to subscribe to the capital stock of said railway upon the terms therein mentioned and issue bonds therefor; that by an election duly held on the 21st of August, 1869, a majority of all the legal voters in said town voted to subscribe $40,000.00 to the said capital stock; that pursuant thereto said subscription was made and accepted by said railway.

41 That said bonds were duly executed and delivered to John Warfield, as custodian thereof, to be by him delivered to said railway upon the compliance by said railway with the terms of said subscription. That about January 6th, 1871, said railway having complied with the said terms, said bonds and coupons were by said Warfield delivered to said railway prior to the filing of said bill and the granting of said injunction. That said subscription was made and said bonds and coupons executed and delivered in good faith without any fraud as charged. That said Chicago, Burlington and Quincy Railway Company had not then, nor ever, any interest in said bonds or coupons. That on filing said answer said injunction was dissolved by said circuit court, and on complainant's motion said bill was then dismissed.

Defendant's counsel also offered evidence tending to show that a special election was held in said town of Ohio, August 21st, 1869, but no registry of voters was made or kept prior thereto. Said election was by ballot and for the purpose of providing for subscription to the capital stock of the Illinois Grand Trunk Railway four hundred (400) shares, of $100 each, to issue bonds of said town therefor to the number

42 four hundred, of $100 each, bearing interest at ten per cent. per annum. Said bonds to be due and payable one-fifth five years after date, and one-fifth in each and every succeeding year thereafter, according to their numerical order, until all were paid—bonds to be issued and delivered only on the express condition that said railway should be completed and the cars running thereon for the purpose of conveying passengers and freight from Mendota through said town of Ohio on old grade, and that the depot be located at the old site selected by the old Illinois Grand Trunk Railway Company. That said election was declared in favor of said proposition.

That said company never accepted said proposition as voted, but afterwards caused a new election to be called, which was held on June 25th, 1870. After registry made and notice given, pursuant to law, at which it was voted 58 ayes to 48 nays, that said town subscribed $40,000 $\frac{00}{100}$ to the capital stock of the Illinois Grand Trunk Railway, to be paid for in the bonds of said township coming due 5, 6, 7, 8, 9, and 10 years from date of issue, bearing interest at rate of ten per cent. per annum, payable annually. That there should be no call upon said township to issue said bonds, except five per cent. thereof, to be used for the purpose hereinafter set forth until sufficient stock has

43 been subscribed to grade, bridge, and tie that portion of said road lying between the town of Mendota, in La Salle County, Illinois, and the town of Prophet's Town, in Whiteside County, Illinois, nor until a contract has been entered into with the Chicago, Burlington

and Quincy Railway Company, or some other responsible capitalists, to take or cause the first mortgage bonds of said Illinois Grand Trunk Railway Company to be sold for at least twelve thousand dollars per mile, in order to procure the necessary iron and material to finish up said portion of said road; said five per cent. to be used in the purchase of that portion of the road-bed of old Illinois Grand Trunk Railway lying between said town of Mendota and the town of Albany, in Whiteside County; said bonds not to be issued until said road was located through said township, with a depot located within said town of Ohio; said bonds to be called for pro rata with other township subscriptions, as the requirement of the work demands. Said vote for subscription not to be binding upon said township for a longer period than three years, unless said conditions are fulfilled on part of said company.

Defendant's counsel then offered in evidence the following copy of the journals of the senate and house of representatives of the State of Illinois, and certificate of George H. Harlow, secretary of state,
44 thereto attached, in the words and figures following; that is to say:

House journal.

* * * * * * *

MONDAY, *January* 11, 1869.

* * * * * * *

Mr. Dinsmoor introduced a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

Which was read a first time and ordered to a second reading.

On motion of Mr. Dinsmoor, the rule was dispensed with, the bill read a second time, and referred to the committee on railroads.

* * * * * * *

WEDNESDAY, *February* 3, 1869.

* * * * * * *

Mr. Bailey, from the committee on railroads, to which was referred a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" reported the same back and recommended its passage.

The report of the committee was concurred in and the bill ordered to a third reading.

* * * * * * *

SATURDAY, *February* 6, 1869—two o'clock p. m.

* * * * * * *

45 A bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" was read a third time, and the question being "Shall this bill pass?"

It was decided in the affirmative. Yeas, 65; nays, 2.

Those voting in the affirmative are—

Messrs. Bond	Messrs. Gilmore	Messrs. Payne
Botwell	Green	Perry
Bradshaw	Gundlach	Phelps
Brookhart	Halley	Porter

Burgess	Hanna	Ravlin
Burke	Hopkins	Reid
Burnett	Howabin	Reynolds
Callaway	Kinyon	Ross, of Fulton.
Casey	Knickerbocker	Rush
Challis	Landrigan	Saltonstall
Childs	Laning	Sickles
Collins	Lawson	Smith
Cook, of Lake	Marsh	Stanley
Cook, of Sangamon	McCutcheon	Strawn
	Miller, of St. Clair	Suigart
Cooper		Talbott
Coy	Miller, of Cook	Thompson
Deitz	Mittower	Voris
Denison	Morgan	Wiley
Dismoor	Morse	Willis
Ewing	Munson	Mr. Speaker.
Fuller	Nase	
Gale	Palmer	

Messrs. Bailey and Woodson voted in the negative.

Ordered that the title be as aforesaid, and that the clerk inform the senate thereof and ask their concurrence therein.

46 SATURDAY, *March* 6, 1869.

* * * * * * *

A message from the senate by Mr. Boggs:

MR. SPEAKER: I am directed to inform the house of representatives that the senate has concurred with them in the passage of house bills of the following titles, to wit, with amendments:

* * * * * * *

House bill No. 231, a bill for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway.'"

* * * * * * *

In which amendment I am instructed to ask the concurrence of the house of representatives.

* * * * * * *

HALF PAST TWO O'CLOCK P. M.

* * * * * * *

A bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" as amended by the senate, was taken up, and the question being "will the house concur with the senate in the adoption of their amendments thereto?"

It was decided in the affirmative. Yeas, 66; nays, 00.

Those voting in the affirmative are—

Messrs. Bailey	Messrs. Gale	Messrs. Porter
Beason	Gaylord	Ravlin
Bond	Halley	Reed
Bothwell	Hanna	Reynolds
Bradshaw	Hopkins	Ross, of St. Clair
Burgess	Howabin	
Burke	Kerr	Ross, of Fulton

	Burnett	Marsh	Rush
	Challis	McCutchen	Saltonstall
	Childs	Merritt	Scroggs
	Collins	Miller, of St. Clair	Sickles
	Cook, of Lake		Smith
	Cook, of Sangamon	Miller, of Cook	Stanley
		Mittower	Sumner
47	Cooper	Morgan	Suigart
	Coy	Morse	Talbott
	Deitz	Munson	Taylor
	Dinsmoor	Nase	Thompson
	Donning	Palmer	Whiting
	Elliott	Parker	Wiley
	Ewing	Payne	Willis
	Frew	Perry	Young
	Fuller	Phelps	Mr. Speaker.

Ordered that the title be as aforesaid, and that the clerk inform the senate thereof.

* * * * * * *

WEDNESDAY, *April* 14, 1869.

* * * * * * *

Mr. Frew, from the joint committee on enrolled and engrossed
48 bills, begs leave to report that the bills of the following titles have been correctly enrolled, and on the 24th day of March, 1869, laid before the governor for his approval, viz:

* * * * * * *

House bill No. 231, "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

* * * * * * *

HALF PAST TWO O'CLOCK P. M.

* * * * * * *

A message from the governor, by E. B. Harlan, private secretary:

Mr. SPEAKER: I am directed by the governor to inform the house of representatives that he has approved and signed bills of the following titles, viz:

* * * * * * *

House bill No. 231 for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

* * * * * * *

Senate Journal.

* * * * * * *

MONDAY, *February* 8, 1869.

* * * * * * *

A message from the house of representatives, by Mr. Halstead:

Mr. SPEAKER: I am directed to inform the senate that the house of representatives has passed bills of the following titles, to wit:

* * * * * * *

49 A bill (H. B. No. 231.) A bill for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway.'"

* * * * * * *

TUESDAY, *February* 9, 1869.
Half past two o'clock p. m.

* * * * * * *

House bill No. 231 for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway,'" was taken up, read a first time and ordered to a second reading. On motion of Mr. Epler the rule was dispensed with, the bill read a second time, and referred to the committee on railroads.

* * * * * * *

THURSDAY, *March* 4, 1869.
Half past two o'clock p. m.

* * * * * * *

Mr. Fuller, from the committee on railroads, to which was referred a bill H. B. No. 231 for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" reported the same back amended and recommended its passage as amended. The report of the committee was concurred in, and the bill ordered to a third reading.

* * * * * * *

FRIDAY, *March* 5, 1869.

* * * * * * *

House bill No. 231 for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway,'" was read a third time, and the question being, "Shall this bill pass?"

It was decided in the affirmative. Yeas 25, noes 00.

Those voting in the affirmative are—

Messrs.	Addams	Messrs.	Mann
	Boyd		Nicholson
	Casey		Patton
	Chittenden		Pinckney
	Crawford		Shepherd
	Dore		Snapp
	Epler		Strevell
	Flagg		Tincher
	Fort		Turney
	Fuller		Van Dorston
	Harlan		Ward
	McManus		Woodson.
	McNulta		

Ordered, that the title be as aforesaid, and the secretary inform the house of representatives thereof, and ask their concurrence therein.

WEDNESDAY, *April* 14, 1869.

* * * * * * *

A message from the governor, by E. B. Harlan, private secretary:

Mr. SPEAKER: I am directed by the governor to inform the senate that he has approved and signed bills of the following titles, viz:

* * * * * * *

House bill No. 231 for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

* * * * * * *

Mr. Foot, from the joint committee on enrolled and engrossed
51 bills, begs leave to report that the bills of the following titles have been on the 6th day of March, A. D. 1869, laid before the governor for his approval, viz:

* * * * * * *

House bill No. 231 for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

* * * * * * *

UNITED STATES OF AMERICA,
State of Illinois, ss:

OFFICE OF SECRETARY.

I, George H. Harlow, secretary of the State of Illinois, do hereby certify that the foregoing is a true and complete copy of the journals of the senate and house of representatives of the 26th general assembly of the State of Illinois, so far as the same relate to the passage of house bill No. 231 for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

And I further certify that I am unable to find any evidence of the passage, in said senate, of an act under the title of "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

Said journals are now on file in this office.

In witness whereof I hereto set my hand, and affix the great seal of State, at the city of Springfield, this 16th day of November, A. D. 1877.

52 [SEAL.] GEO. H. HARLOW,
Sec'y of State.

And rested the case on her part.

Whereupon plaintiff's counsel offered a copy of said journals in words and figures following, viz:

House Journal.

* * * * * * *

MONDAY, *January* 11, 1869.

* * * * * * *

Mr. Dinsmoor introduced a bill (H. B. No. 231) for an act to amend an act entitled an act to incorporate the Illinois Grand Trunk Railway, which was read a first time and ordered to a second reading.

On motion of Mr. Dinsmoor the rule was dispensed with, the bill read a second time, and referred to the committee on railroads.

* * * * * * *

WEDNESDAY, *February* 3, 1869.

* * * * * * *

Mr. Bailey, from the committee on railroads, to which was referred a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" reported the same back and recommended its passage. The report of the committee was concurred in and the bill ordered to a third reading.

53 * * * * * * *

SATURDAY, *February 6th*, 1869.

* * * * * * *

2 O'CLOCK P. M.

* * * * * * *

A bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway'" was read a third time, and the question being "Shall the bill pass?"

It was decided in the affirmative. Yeas, 65; nays, 02.

Those voting in the affirmative are—

Messrs.	Bond	Gilmore	Palmer
	Bothwell	Greene	Payne
	Bradshaw	Gundlach	Perry
	Brookhart	Halley	Phelps
	Burgess	Hanna	Porter
	Burke	Hopkins	Ravlin
	Burnett	Howabin	Reed
	Callaway	Kinyon	Reynolds
	Casey	Knickerbocker	Ross, of Fulton
	Challis	Landrigan	Rush
	Childs	Laning	Saltonstall
	Collins	Lawson	Sickles
	Cook, of Lake	Marsh	Smith
	Cook, of Sangamon	McCutcheon	Stanley
		Miller, of St. Clair	Strawn
	Cooper		Suigart
	Coy	Miller, of Cook	Talbott
	Deitz	Miltower	Thompson
	Denison	Morgan	Voris
	Dinsmoor	Morse	Wiley
	Ewing	Munson	Willis
	Fuller	Nase	Mr. Speaker.
54	Gale		

Those voting in the negative are—

Messrs. Bailey and Woodson.

Yeas, 65; nays, 2.

Ordered that the title be as aforesaid, and that the clerk inform the senate thereof, and ask their concurrence therein.

* * * * * * *

SATURDAY, *March* 6, 1869.

* * * * * * *

A message from the senate, by Mr. Boggs:

Mr. SPEAKER: I am directed by the house of representatives that the senate has concurred with them in the passage of house bills of the following titles, to wit, with amendments:

* * * * * * *

H. B. No. 231. A bill for an act to amend an act entitled "An act to incorporate the Grand Trunk Railway."

* * * * * * *

In the adoption of which amendments, I am instructed to ask the concurrence of the house of representatives.

* * * * * * *

HALF PAST TWO O'CLOCK P. M.

* * * * * * *

A bill (H. B. No. 231) for an act to amend an act entitled "An act to incorporate the Illinois Grand Trunk Railway," as amended by the senate, was taken up, and the question being—

Will the house concur with the senate in the adoption of their amendments thereto?

55 It was decided in the affirmative. Yeas, 66; nays, 00.

Those voting in the affirmative are—

Messrs.	Bailey	Gale	Porter
	Beason	Gaylord	Ravlin
	Bond	Halley	Reed
	Bothwell	Hanna	Reynolds
	Bradshaw	Hopkins	Ross, of St. Clair
	Burgess	Howabin	Ross, of Fulton
	Burke	Kerr	Rush
	Burnett	Marsh	Saltonstall
	Challis	McCutcheon	Scroggs
	Childs	Merritt	Sickles
	Collins	Miller, of St. Clair	Smith
	Cook, of Lake	Miller, of Cook	Stanley
	Cook, of Sangamon	Miltower	Sumner
	Cooper	Morgan	Suigart
	Coy	Morse	Talbot
	Deitz	Munson	Taylor
	Dinsmoor	Nase	Thompson
	Downing	Palmer	Whiting
	Elliott	Parker	Wiley
	Ewing	Payne	Willis
	Frew	Perry	Young
	Fuller	Phelps	Mr. Speaker.

Yeas, 66; nays, 00.

Ordered that the title be as aforesaid and that the clerk inform the senate thereof.

* * * * * * *

WEDNESDAY, *April* 14, 1869.

* * * * * * *

56 Mr. Frew, from the joint committee on enrolled and engrossed bills, begs leave to report that the bills of the following titles have been correctly enrolled and on this 24th day of March, 1869, laid before the governor for his approval, viz:

* * * * * * *

House bill No. 231.

An act to amend an act entitled an act to incorporate the Illinois Grand Trunk Railway.

* * * * * * *

HALF PAST 2 O'CLOCK P. M.

* * * * * * *

A message from the governor by E. B. Harlan, private secretary:

Mr. SPEAKER: I am directed by the governor to inform the house of

representatives that he has approved and signed bills of the following titles, viz:

* * * * * * *

H. B. No. 231.

An act to amend an act entitled "An act to incorporate the Illinois Grand Trunk Railway."

* * * * * * *

Senate Journal.

* * * * * * *

MONDAY, *February 8th*, 1869.

* * * * * * *

A message from the house of representatives, by Mr. Halsted:

Mr. SPEAKER: I am directed to inform the senate that the
57 house of representatives has passed bills of the following titles, to wit:

* * * * * * *

H. B. 231.

A bill for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway.'"

* * * * * * *

TUESDAY, *February 9th*, 1869.

* * * * * * *

HALF-PAST 2 O'CLOCK P. M.

* * * * * * *

House bill No. 231, for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway,'" was taken up, read a first time and ordered to a second reading.

On motion of Mr. Epler the rule was "dispensed with," the bill read a second time and referred to the committee on railroads.

* * * * * * *

THURSDAY, *March* 4, 1869.

* * * * * * *

2½ O'CLOCK P. M.

* * * * * * *

Mr. Fuller, from the committee on railroads, to which was referred a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" reported the same back amended and recommended its passage as amended.

The report of the committee was concurred in, and the bill ordered to a third reading.

58 * * * * * * *

FRIDAY, *March 5th*, 1869.

* * * * * * *

House bill No. 231, for "An act to amend an act entitled 'An act to

incorporate the Grand Trunk Railway,'" was read a third time, and the question being, "Shall the bill pass?"

It was decided in the affirmative—yeas, 25; nays, 00.

Those voting in the affirmative are—

Addams	Fuller	Shepherd
Boyd	Harlan	Snapp
Casey	McManus	Strevell
Chittenden	McNulta	Tinch
Crawford	Munn	Turney
Dore	Nicholson	Van Dorston
Epler	Patton	Ward
Flagg	Pinckney	Woodson
Fort		

Ordered, That the title be as aforesaid, and that the secretary inform the house of representatives thereof, and ask their concurrence therein.

* * * * * * *

MONDAY, *March 8th*, 1869.

* * * * * * *

A message from the house of representatives, by Mr. Halsted.

59 Mr. SPEAKER: I am directed to inform the senate that the house of representatives has concurred with them in the passage of amendments of house bills of the following numbers, to wit:

* * * * * * *

231.

* * * * * * *

WEDNESDAY, *April 14th*, 1869.

* * * * * * *

A message from the governor by E. B. Harlan, private secretary.

Mr. SPEAKER: I am directed by the governor to inform the senate that he has approved and signed bills of the following titles, viz:

* * * * * * *

H. B. No. 231.

An act to amend an act entitled "An act to incorporate the Illinois Grand Trunk Railway."

* * * * * * *

Mr. Flagg, from the joint committee on enrolled and engrossed bills, begs leave to report that the bills of the following titles have been, on the 24th day of March, 1869, laid before the governor for his approval, viz:

* * * * * * *

H. B. 231.

An act to amend an act entitled "An act to incorporate the Illinois Grand Trunk Railway."

* * * * * *

UNITED STATES OF AMERICA,
State of Illinois, ss:

60 OFFICE OF SECRETARY.

I, George H. Harlow, secretary of the State of Illinois, do hereby certify that the foregoing is a true and complete copy of all the proceeding had in the house of Representatives and senate of the 26th general assembly of the State of Illinois, in relation to house bill No. 231, a bill introduced under the title of "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" said copy being taken from the original journals, which are now on file in this office.

In witness whereof, I hereto set my hand and affix the great seal of State, at the city of Springfield this eleventh (11th) day of December, A. D. 1877.

[SEAL.] GEO. H. HARLOW,
Secretary of State.

Which was all the evidence offered or received on said trial.

Whereupon the court found the issues in the case for the plaintiff, as appears by the special findings on file, which are to be considered a part of the record, to which special findings of the court that the act purporting to be an act of the legislature of the State of Illinois entitled, "An act to amend an act to incorporate the Illinois Grand Trunk Railway," approved March 25th, 1869.

61 The said defendant by her said counsel did then and there duly except and move for judgment in favor of defendant upon said findings which was denied, and afterwards the court rendered judgment upon said finding in favor of the plaintiff against said defendant, as elsewhere appears; to which actions and rulings of the court in rendering judgment for plaintiff upon said special findings, the counsel for defendant did then and there duly and separately except; and because the said several matters do not otherwise appear the defendant's counsel asked the court to sign and seal this bill of exceptions, and make the same a part of the record in this cause, which is done accordingly.

[SEAL.] H. W. BLODGETT, *Judge.*

The foregoing bill of exceptions is satisfactory to me.
July 16, 1878.

JAS. H. ROBERTS.

(Endorsed:) Filed March 22, 1878. Wm. H. Bradley, clerk.

And afterwards, to wit, on the 16th day of April, A. D. 1878, said defendant, by its attorney, filed in said clerk's office its bond in said entitled cause, which said bond is in the words and figures following, to wit:

62 *Bond.*

Know all men by these presents that we, The Town of Ohio, Bureau County, Illinois, as principal, and William James, Perry F. Remsberg, Henry Parchen, Geo. Hamme, Frank Langworthy, A. J. Haines, James Ross, A. Keelley, G. T. Matson, Geo. Ruprecht, John Wolfer, S. Remsberg, J. H. Bowlus, S. B. Lower, Antoine Diebolt, Geo. Ross, Wm. Townsend, D. T. Clark, H. F. Covey, Sam'l Stevenson, R. T. Oliverson, J. Corbin, Hiram Scholes, Levi Stevenson, Payton Bishop, J. M. Smith, Leander Chambers, Alex. Paden, Dan'l Kiser, W. E. Kiser, J. B. Keel,

A. S. Jones, G. Z. Willey, Wm. G. Garten, W. B. Howell, H. J. Willey, Sam'l Keel, Hanson Remsberg, James Doran, Chas. W. Terry, Philip Terry, J. Bower, J. S. Kasbeen, M. J. Keith, Jacob Joder, J. Ackerman, M. Fagan, J. Albrecht, P. J. Conrad, Peter Demerath, F. Conrad, M. Grombriel, J. P. Burnham, J. C. Kepler, Jesten Iuks, F. B. Scharans, J. Denison, J. H. Paterson, Henry Jackson, as sureties are held and firmly bound unto Augustus Frank in the full and just sum of thirteen thousand dollars, lawful money of the United States of America, to be paid to the said above named obligee or to his certain attorneys, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our successors, heirs, executors, and ad-
63 ministrators, jointly and severally, firmly by these presents. In witness whereof said Town of Ohio as principal has caused this bond to be signed by the supervisor and town clerk, there being no official seal, this 30th day of March, A. D. 1878, and said sureties have hereunto affixed their hands and seals on the same day.

Whereas lately at a circuit court of the United States held at Chicago in and for the northern district of Illinois, on the twenty-second day of March, A. D. 1878, in a suit depending in said court between Augustus Frank, plaintiff, and The Town of Ohio, Bureau County, Illinois, defendant, a judgment was rendered against the said The Town of Ohio for the sum of nine thousand five hundred and seventy-six dollars and twenty-nine cents ($9,576.29) besides costs of suit, in favor of said Frank, and the said The Town of Ohio having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said above named plaintiff as defendant in error, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such that, if the
64 said The Town of Ohio shall prosecute her writ of error to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

THE TOWN OF OHIO. [SEAL.]
By DANIEL P. SMITH, [SEAL.]
Supervisor.
GEORGE W. ELLIS, [SEAL.]
Town Clerk.

William James.	[seal.]	J. H. Bowlus.	[seal.]
Perry F. Remsburg.	[seal.]	S. B. Lower.	[seal.]
Henry Parchen.	[seal.]	Antoine Diebolt.	[seal.]
George Hamme.	[seal.]	Geo. Ross.	[seal.]
Frank Langworthy.	[seal.]	Wm. Townsend.	[seal.]
A. J. Haines.	[seal.]	D. T. Clark.	[seal.]
James Ross.	[seal.]	H. F. Covey.	[seal.]
A. Keelley.	[seal.]	Samuel Stevenson.	[seal.]
G. C. Matson.	[seal.]	R. T. Oliverson.	[seal.]
George Ruprecht.	[seal.]	Jonathan Corbin.	[seal.]
John Wolfer.	[seal.]	Hiram Scholes.	[seal.]
65 Solomon Remsberg.	[seal.]	Levi Stevenson.	[seal.]
Payton Bishop.	[seal.]	John S. Kasbeen.	[seal.]
J. M. Smith.	[seal.]	Melvin J. Keith.	[seal.]
Leander Chambers.	[seal.	Jacob Joder.	[seal.]

Alex. Paden.	[seal.]	Joseph Ackerman.	[seal.]
Daniel Kiser.	[seal.]	Mike Fagan.	[seal.]
W. E. Kiser.	[seal.]	Jacob Albrecht.	[seal.]
J. B. Keel.	[seal.]	Peter J. Conrad.	[seal.]
A. L. Jones.	[seal]	Peter Demerath.	[seal.]
G. Z. Willey.	[seal.]	Friedrich Conrad.	[seal.]
William G. Garten.	[seal.]	M. Grombriel.	[seal.]
M. B. Howell.	[seal.]	J. P. Burnham.	[seal.]
H. J. Willey.	[seal.]	J. C. Kepler.	[seal.]
Samuel Keel.	[seal.]	Jeston Iuks.	[seal.]
Hanson Remsburg.	[seal]	F. B. Scharans.	[seal.]
66 James Doran.	[seal.]	James Denison.	[seal.]
Charles W. Terry.	[seal.]	J. H. Paterson.	[seal.]
Mr. Philip Terry.	[seal.]	Henry Jackson.	[seal.]
John Bower.	[seal.]		

Sealed and delivered in presence of—
D. P. SMITH.

STATE OF ILLINOIS,
Bureau County, ss:

Alexander Paden, George Hamme, John Purvis, James H. Bowlues, James Ross, Melvin J. Keith, Daniel P. Smith, and Jacob Joder, of said county, being each duly sworn on oath, states, each for himself, that he is one of the sureties named in the written bond, and is worth eight thousand dollars in unincumbered real estate in said county, and is worth the full sum of eight thousand dollars over and above all his debts and liabilities which he owes or has incurred, exclusive of legal exemptions.

ALEXANDER PADEN.
GEORGE HAMME.
JOHN PURVIS.
JAMES H. BOWLUES.
JAMES ROSS.
MELVIN J. KEITH.
DANIEL P. SMITH.
JACOB JODER.

Sworn to and subscribed before me this 2d day of April, A. D. 1878.
[SEAL.] WM. N. WOODARD,
Notary Public.

Approved.

H. W. BLODGETT, *Judge.*

67 (Endorsed): Filed April 16th, 1878. Wm. H. Bradley, cl'k.

68 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Augustus Frank is the plaintiff and The Town of Ohio is the defendant, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said district, this 24th day of September, A. D. 1878, and of our Independence the one hundred and third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

69 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Augustus Frank, plaintiff, and the Town of Ohio, defendants, a manifest error hath happened, to the great damage of the said The Town of Ohio as by her complaint appears, and it is being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1878, in the Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of April, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 102*th* year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Supreme Court of the United States. Town of Ohio, pl'ff in error, vs. Aug. Frank, d'f't in error. Writ of error. Filed, and copy deposited for the defendant in error in my office this 12th April, 1878. Wm. H. Bradley, cl'k.

70 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To Augustus Frank, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1878, pursuant to an writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the Town of Ohio is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment therein mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett this sixteenth day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

H. W. BLODGETT, *Judge.*

71 Received copy within this 16th day of April, A. D. 1878.

JAMES H. ROBERTS,
Att'y for Pl'ff.

(Indorsed:) Supreme Court of the United States. Ohio vs. Frank. Citation. To October term, A. D. 1878.

(Indorsement on cover:) No. 259. The Town of Ohio, plaintiff in error, vs. Augustus Frank. N. Illinois C. C. U. S. Filed 12th October, 1878.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1880.

THE TOWN OF OHIO,
Plaintiff in Error,
vs.
AUGUSTUS FRANK,
Defendant in Error.

No. 259.
Error to the Circuit Court of the United States, Northern District of Illinois.

Points and Argument for Plaintiff in Error.

ALLAN C. STORY,
For Plaintiff in Error.

CHICAGO, ILL.:
S. I. BRADBURY & SONS, LEGAL PRINTERS, 78 FIFTH AVE.
1881.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1880.

THE TOWN OF OHIO,
Plaintiff in Error,
vs.
AUGUSTUS FRANK,
Defendant in Error.

No. 259.
Error to the Circuit Court of the United States, Northern District of Illinois.

STATEMENT.

On the 11th day of January, 1869, a Bill marked H. B., No. 231, entitled "An act to amend an act entitled an act to incorporate the *Illinois* Grand Trunk Railway," was introduced in the House of Representatives, State of Illinois. After passing through the stages of legislation, it was passed February 6th, 1869, and it was ordered that the title be as aforesaid, and that the Clerk inform the Senate thereof. (Rec. 20, 21.)

No bill by that title was ever reported from the House to the Senate, but on the 8th of February 1869, a report was made from the Senate to the House that a Bill, H. B. No. 231, for an act to amend an act to incorporate the Grand Trunk Railway had been passed, and concurrence was asked. After passing through the several legislative stages on the 5th day of March, 1869, House Bill, No. 231 for an act to amend an act entitled an act to incorporate

The Grand Trunk Railway was read a third time, and the bill passed, *and it was ordered that the title be as aforesaid.* (Rec. 22, 27.)

On the 6th day of March, 1869, a message was delivered from the Senate to the House that certain House bills had been passed with amendments, and among them House Bill, No. 231, a bill for an act to amend an act entitled an act to incorporate the Grand Trunk Railway, in which amendments the concurrence of the House was asked, and on the same day said bill, thus described and entitled, was taken up, and the House concurred with the Senate in the amendments thereto, and it was ordered that the title be as aforesaid. (Rec. 21.)

On the 14th of April, 1869, message was delivered from the Governor that he had approved and signed bills, one which bore the following title, "House Bill, No. 231, for an Act to amend an act entitled and act to incorporate the Illinois Grand Trunk Railway." (Rec. 21.)

The Secretary of State certifies that he is unable to find any evidence of the passage in the Senate of an act under the title of "An Act to amend an act entitled 'an act to incorporate the *Illinois* Grand Trunk Railway.'" (Rec. 23."

There was published in Vol. 3, Private Laws of 1869, page 307 the following act:

An Act to amend an act entitled "An Act to incorporate The Illinois Grand Trunk Railway."

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, that any city, incorporated town, or township which may be situated on or near the route of the Illinois Grand Trunk Railway west of the city of Mendota, via. Prophetstown, to the Mississippi River, may become subscribers to the stock of

said railway, and may issue bonds for the amount of such stock so subscribed with coupons for interest thereto attached under such limitations and restrictions and on such conditions as they may choose, and the directors of said Company may approve the proposition for said subscription, having been first submitted to *the inhabitants* of such city, town or township, and *approved by them;* and upon application of any ten voters of any city, town or township, as aforesaid, specifying the amount to be subscribed, and the conditions of such subscription, it shall be the duty of the clerk of such city, town or township immediately to call an election, in the same manner that other elections for said city, town or township are called, for the purpose of determining whether said city, town, or township will subscribe to the stock of said railway; and if a majority of said votes shall be "for subscription," then the corporate authorities of said city, town, or township, and the supervisor and town clerk of said township so voting, shall cause said subscription to be made; and upon its acceptance by the directors of said Company shall cause bonds to be issued in conformity with said vote, which bonds shall not be of less denomination than one hundred dollars, and in no case bear a higher rate of interest than ten per cent., provided no such election shall be held until at least thirty days' previous notice thereof shall be given in the manner prescribed by law.

SECTION 2. It shall be the duty of the proper authorities of any city, town or township, issuing bonds as aforesaid, to make all necessary arrangements, and provide for the prompt payment of all interest and other liabilities accruing thereon, and to levy such taxes as may be necessary therefor as other taxes are levied by them.

SECTION 3. This act shall be liberally construed for

the purposes intended and expressed therein, and shall be held to be a public act, and shall be in force from and after its passage.

On the 21st day of August, 1869, an election was held in the Town of Ohio, Bureau County, Illinois, at which it is claimed that "the corporate authorities, and the Supervisor, and Town Clerk," of said town, were authorized upon certain conditions shown (Rec. 18), to subscribe for and take 400 shares, of $100 each, of the capital stock of "The Illinois Grand Trunk Railway," to be accepted by the company within three years, to be paid for in bonds of said Township, due one-fifth in 5 years, and one-fifth annually thereafter, from date of issue, with interest at 10 per cent. per annum, payable annually. Said bonds to be issued and delivered only on express conditions that said railway should be completed and cars running thereon, carrying passengers and freight, through said Town of Ohio, and depot located therein. (Rec. 15.) On the 2d day of July, 1870, a vote was taken by the voters of the State of Illinois, which resulted in the adoption of the new Constitution, and of certain separate articles, one of which took effect *that day* and reads as follows:

"No County, State, Town, Township, or other municipality, shall ever become subscriber to the capital stock of any railway or private corporation, or make donation to, or loan its credit in aid of, such corporation; but, provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscription where the same has been authorized under existing laws by a vote of the people of such municipalities *prior* to such adoption."

This vote of $40,000 was never accepted by the company;

but on June 25th, 1870, a second vote taken upon another proposition to subscribe $40,000 as requested by said railway directors, the same to be paid for in bonds of said township, due in 5, 6, 7, 8, 9 and 10 years from date of issue, with interest at ten per cent per annum, which vote was against the bonds.

In January, 1871, after the separate article of the Constitution, prohibiting the making of subscriptions to railway companies took effect, and without *the corporate authorities* of the town, taking any action on the subject of such vote, the Supervisor and Town Clerk of Ohio alone executed 400 bonds, for the sum of $100 each, numbered consecutively from 1 to 400 inclusive, amounting in the aggregate to $40,000, said bonds bearing interest at the rate of ten per cent. per annum, payable annually, payable to the Illinois Grand Trunk Railway, or bearer, on the first day of January, 1876, and annually thereafter, and dated January 1, 1871, said principal and interest payable at "the office of the State Treasurer, at Springfield, Ill." (Rec. 14–18.)

On the trial, one of the said bonds, No. 35, was read in evidence and reads as follows:

Number 35. UNITED STATES OF AMERICA. 100 Dollars.
STATE OF ILLINOIS.
Ohio Township Railroad Bond.

"Know all men by these presents, That the Township of Ohio, in the County of Bureau, and State of Illinois, is indebted to the Illinois Grand Trunk Railway, or bearer, the sum of one hundred dollars, lawful money of the United States, which the said Township of Walnut promises to pay to the Illinois Grand Trunk Railway, or to the bearer hereof, on the first day of January, in the

year one thousand eight hundred and seventy-six at the office of the State Treasurer, in Springfield, Illinois, on the presentation of this bond, with interest thereon from the first day of January, A. D. 1871, at the rate of ten per centum per annum, payable annually at the office of the State Treasurer, Springfield, Illinois, on the first day of January in each year, *on the presentation and surrender of the annexed coupons* as they severally become due.

"This bond is issued under and by virtue of the Charter of said Illinois Grand Trunk Railway, and amendment thereto, and other Laws of the State of Illinois, all in accordance with the vote of the electors of said Township at the special election held August 21st, A. D. 1869, in accordance with said charter and amendment and laws.

"In witness whereof, the said Township of Ohio has caused these presents to be signed by the Supervisor and Clerk of said Township, this first day of January, one thousand eight hundred and seventy-one.

JOHN W. FORNEY,
Town Clerk.

WILLIAM S. WILSON,
Supervisor.

(Across the face :) $100.

(Endorsed :) The Illinois Grand Trunk Railway, by A. H. Castle, President. Auditor's office, Illinois, Springfield, April 15th, 1871.

On the trial the bonds and Town Orders mentioned in the declaration, were put in evidence, one No. 81 being copied in the record, reads as follows:

$10 OHIO TOWNSHIP. No. 81.

Railroad Bond.

INTEREST WARRANT.

Supervisor of the Township of Ohio, pay to bearer Jan-

uary 1st, 1877, ten dollars, at the office of State Treasurer, Springfield, Illinois.

J. W. FORNEY,
Town Clerk.

WM. S. WILSON,
Supervisor.

(Across the face :) 6. (Rec. 17.)

January 6, 1871, the Supervisor and Town Clerk of said Town subscribed for $40,000 of the capital stock of said Illinois Grank Trunk Railway, and issued and delivered said 400 bonds to said Railway in payment of said subscription, and thereafter the railroad corporation sold said bonds.

This action was brought as is alleged in the declaration upon fifty-two bonds of one hundred dollars each, dated January 1, 1871; forty-nine falling due January 1, 1876, and three January 1, 1877, all payable to Illinois Grand Trunk Railway or bearer, at office of State Treasurer, Springfield, Illinois, also one hundred and thirty-six interest coupons for $10, all dated January 1, 1871, each payable to bearer, one due January 1, 1873, sixteen January 1, 1874, ninety-six January 1, 1876, and twenty-three January 1, 1877.

That all said bonds and coupons, at the date thereof, were delivered to said railway by the defendant, and by the railway endorsed in blank to divers persons, and by plaintiff purchased for a valuable consideration. That demand has been made at State Treasurer's office, after due, but payment refused. (Rec. 2.)

In the court below, March 22, 1878, this cause was heard before the Hon. Henry W. Blodgett, District Judge, sitting as Circuit Judge, a jury being waived, as per stipulation filed; said stipulation being that the judgment

rendered should be binding upon the parties as if upon the verdict of a jury, subject to the right of either party to prepare a Bill of Exceptions and sue out a Writ of Error. The proceedings on the trial were preserved by a Bill of Exceptions (Rec. 15) and the Court made a special finding of facts, (Rec. 14,) and, thereupon, the Court found for the plaintiff upon the bonds and interest orders, and assessed the damages at $9,576, including $3,-016.29 interest, and rendered judgment therefor. (Rec. 14.)

In the course of the trial the plaintiff offered in evidence said 52 bonds, and also 136 interest orders, a copy of one of each has been given. When the bonds and interest orders were offered, objection was made in apt time to each. First, that the same were not signed by the corporate authorities of said town. Second, That they had not been presented to the proper officers or demand of payment made thereon. Third, The coupons or orders were detached from, and not annexed to, any bond, and the absence of said bond had not been accounted for; but the Court overruled all of said objections and received the said bonds and interest orders in evidence; to which exception was taken. Rec. 16, 17.)

The bill of exceptions also shows that plaintiff's counsel offered evidence tending to show that the bonds were endorsed in the handwriting of A. H. Castle, acting President of the Illinois Grand Trunk Railway in January, 1871, of which L. C. Ellsworth was secretary and treasurer. That bonds were made in August, 1870, by the supervisor and town clerk, and handed to John Warfield, of Quincy, *to be delivered* to said Illinois Grand Trunk Railway when the railroad was completed, and were by him delivered to said railway January 6, 1871, who transferred them for value. Defendant then offered evidence

tending to show that on the 13th of January, 1871, James Ross and the other residents and tax-payers of the town of Ohio brought a bill in chancery, in the Circuit Court of Bureau county, against Wilson, Supervisor, Forney, Town Clerk, John Warfield, the Illinois Grand Trunk Railway Company and Chicago, Burlington & Quincy Railway Company, setting forth an attempt by certain *inhabitants* to hold an election in said town to authorize a subscription of $40,000 by town authorites to the stock of the Illinois Grand Trunk Railway on 21st of August, 1869; same one recited in bonds, alleging no notice of such election was given, no registry of votes made or used at said election, and same not carried by majority of votes cast; that the company last named did not organize until after said election, viz: January, 1870. That said company refused to accept said subscription voted on August 21, 1869, and so notified the town officers of the town of Ohio, and submitted a different subscription to be voted for by said town. At the company's request another election was held in said town in June, 1870, when a majority of said inhabitants voted against the subscription.

That said company never signified acceptance of said $40,000 subscription of Aug. 21, 1869, until in December, 1870, when the bonds were fraudulently issued by Forney & Wilson to one John Warfield in *escrow*, to be delivered to said I. G. T. Railway and by said company to the C. B. & Q. R. R. Co., when said railway should be completed through said Town of Ohio, and complainants feared by fraud and collusion between defendants and officers named said bonds would pass into hands of innocent purchasers, and praying an injunction, etc., restraining said parties from executing, delivering or negotiating.

That the writ was served on Town Clerk and Super-

visor, and C. B. & Q. Railway, Jan'y 13, '71, January 17th on Warfield & Ill. G. T. Railway. (Rec. 17, 18.)

Plaintiff offered answer filed in said Chancery suit March 27, 1871, alleging Incorporation of I. G. T. Railway, election of 21st Aug. 1869, execution and delivery of bonds to Warfield; that about January 6, 1871, bonds and coupons delivered by W. to Railway prior to filing bill. That subscription made and bonds issued and delivered in good faith. Dissolution of injunction and dismissal of bill by complainants in March, 1871.

The proceeding had at the two elections referred to, Aug. 21, 1869, and June 25, 1870, were also shown in evidence, with the conditions of each vote.

The defendant excepted, in apt time, to the finding of the Court that the Act of the Legislature was passed in a constitutional manner by the General Assembly of the State, and also excepted to the special findings of the Court, and to the rendering of judgment in favor of the plaintiff and against the defendant. (Rec. 28.)

The Town brings the case here by writ of error.

ASSIGNMENT OF ERRORS.

1. The bonds and coupons sued on are *void* because there was no statute authorizing the issue of the bonds or coupons or even the execution thereof.

2. Even if the bill was properly passed and became a law, the conditions precedent therein provided were never complied with; no votes of the "inhabitants" having been had, nor any valid "acceptance" by the Railroad Company of the subscription.

3. There was no valid authority to make the subscription prior to July 2d, 1870, when the Constitution of Illinois took effect, which prohibited subscription and issu-

ance of bonds for such purposes by corporations like plaintiff in error.

4. The "corporate authorities" of the Township of Ohio did *not cause* the subscription to be made, and the bonds to be issued, and there was no vote of the electors on the questions of subscription or bonds authorized by the legislature.

5. The instruments sued on, and offered in evidence as "interest coupons," were neither contracts or agreements by the town to pay until after their acceptance by the drawee, and neither presentation nor acceptance was alleged or shown, by which any liability could be created, and it was error to admit them in evidence.

6. The Court erred in allowing interest upon the town orders, or so-called coupons, the same being issued by a municipal corporation, and there being no agreement therein to pay interest.

7. The Court erred in receiving the town orders in evidence, disconnected from, and without producing the bonds.

8. The findings of the Court did not entitle defendant in error to judgment, and it was error to enter judgment thereon, over an objection, and refuse to enter judgment for plaintiff in error, as requested.

9. The Court erred in finding that the Act of March 25, 1869, was passed in a constitutional manner by the General Assembly of Illinois, upon the uncontradicted evidence submitted.

10. The Court erred in allowing interest on the bonds after their maturity, there being no agreement therein to pay interest beyond the date named in each.

POINTS.

The case thus presented involves the following questions:

1. Whether the so-called act was passed in the manner prescribed by Art. III, §§ 21, 23 of Illinois Constitution of 1848, and became a law. The legislative journals of each house were put in evidence and appear in the bill of exceptions, (Rec. 21 to 31,) from which it appears undisputed that no act to amend the charter of the "*Illinois* Grand Trunk Railway" ever passed the Senate of 1869.

R. S. Ill., 1874, p. 39.
Binz v. *Weber*, 81 Ill. 288.
Johnson v. *People*, 83 Ill. 435.
Ryan v. *Lynch*, 68 Ill. 163.
Miller v. *Goodwin*, 70 Ill. 659.
Town of Ottawa v. *Perkins*, 94 U. S., 261.

2. Said alleged act is in conflict with Article IX, § 5, and Article VI, Constitution of Illinois of 1848.

Ill. R. S. 1874, pp. 39, 51, 53.
People ex rel. v. *Society Prot. Deaconesses*, 71 Ill. 229.
Sedgwick on Stat. and Const. Law, p. 30, 338–9.
People v. *Wright*, 70 Ill. 388.
Cooley on Const. Lim., §§ 81, 83. 149.
People v. *Lawrence*, 36 Barb. N. Y., 186.
O'Leary v. *Cook County*, 24 Ill. 537.
Erlinger v. *Boneau*, 57 Ill. 94.
Mills v. *Co. St. Clair*, 2 Gilm. Rep. 198.
St. Clair Turnpike Co., v *People*, 82 Ill. 174.
Protho v. *Orr*, 12 Geo. 36.
I. C. R. R. Co., v. *Potts*. 7 Ind. 683.
People v. *Mellen*, 32 Ill. 181.
Mewhiter v. *Price*, 11 Ind. 199.
People v. *Thome*, 35 Ill. 121.

State v. *Miller*, 45 Mo. 495.
Weaver v. *Lapsey*, 43 Ala. 22.
Priv. Laws. Ill. 1869, title "Railroads."
Mills v. *McCabe*, 44 Ill. 194.
Supervisors Tazewell v. *Davenport*, 40 Ill. 197.

3. The bonds and interest warrants were unauthorized. The act in question, in terms, provides "the proposition for said subscription, having been *first submitted* to the *inhabitants* of such city, town, or township, and approved by them," and it appears from the bill of exceptions, finding of the Court, and recitals in the bonds, that no attempt was ever made to submit such proposition to the "*inhabitants*" *of the Town of Ohio.*

Cooley's Const'l Lim., Sec. 65.
Thomas v. *Owens*, 4 Md. 189.
Matter of Dorsey, 7 Porter, 293.
Rison v. *Farr*, 24 Ark. Rep. 161.
St. Josephs R. R. v. *Buchanan Co. Court*, 39 Mo. 485.
The State v. *Williams*, 5 Wis. Rep. 308.
Monroe v. *Collins*, 17 Ohio, N. S. 665.
The State v. *Simonds*, 57 Maine, 148.
The State v. *Staten*, 6 Cold. 243.
Davis v. *McKeeley*, 5 Nev. Rep. 369.
McCafferty v. *Guyer*, 57 Penn. St. 109.

4. It appears from the bill of exceptions and finding of the judge, that the so called bonds and interest orders were in fact based upon an alleged election held Aug. 6, 1870, by the voters of said town, and were therefore clearly prohibited by Section 2, Art. XIV, Illinois Constition, in force July 2d, 1870.

5. It appears by the bill of exceptions, that the alleged act of March 25, 1869, in terms only authorized an issuance of bonds by the town "upon *the acceptance by the directors of said company*" of the subscriptions to the ca-

pital stock thereof, as voted, etc. The bill of exceptions and finding of the Court show that no subscription was in fact made, or acceptance had until January A. D. 1871, when by Section 4, of Art. XIV, Constitution of July 2, 1870, the same was prohibited.

People v. *Tazewell Co.*, 22 Ill, 154–56.
Dillon on Munic. Corp., 88, § 42.
Aspinwall v. *Com'rs Davis Co.*, 22 How. 362.
Wadsworth v. *Supervisors Eu Claire*, Oct. T. 1880, S. C. U. S., 13 Chicago Leg. News, 160.
Allen v. *City Louisiana*, Oct. T. 1880, S. C. U. S., 13 Chicago Legal News, 185.

6. It appears from the bill of exceptions that though an election authorizing subscription of $40,000 was held Aug. 21, 1869, by the electors, yet the directors of the railway company, by notice, prior to June 25th, 1870, *refused to accept the same*, and on that day another election was held. That the Supervisor and Clerk fraudulently colluding with the company pretending to act upon authority of the Aug. 21, 1869, vote, executed the bonds to one Warfield, in *escrow*, who took them to Quincy, Illinois, and in January, 1871, subscribed for $40,000 stock, and delivered the bonds, including those sued on. (Rec. 17, 18.)

7. It appears from the bill of exceptions, the finding of the judge, as well as the entire record that the bonds and interest orders were signed by the supervisor and town clerk only; whereas the said act of March 25, 1869, in terms, required the bonds to be issued and signed by "*the corporate authorities and the supervisor and town clerk* of such town," and our objection to receiving them in evidence should have been sustained. (Rec. 17.)

8. The town orders sued on as interest warrants, "not being absolute promises to pay, on their face, showing no authority to the town to issue them, are not commercial paper and could not separate from the bond, and without endorsement form a claim in favor of plaintiff against the town, and should not have been received in evidence over objection for that ground as shown in the bill of exceptions. (Rec. 17.)

1 Dillon Munic. Corp. § 406 and note.
Gross Stat. Ill. 1869, ch, 73, § 3, 4.
Dana v. *San Francisco*, 19 Cal. 490.
People v. *Supervisors*, 11 Cal. 170.
1 Daniels Neg. Insts. § 427, and cases cited.
Dyer v. *Covington*, 19 Penn. St. 200.
Allison v. *Juniata Co.*, 50 Penn. St. 351.

9. The bonds and orders or interest warrants, there being no evidence of their having been presented to the drawee at place of payment named therein, were improperly admitted in evidence at the trial over our objection as shown by bill of exceptions. (Rec. p. 17.)

1 Daniel on Neg. Insts., § 430.
Arents v. *Commonwealth*, 18 Gratt. Va. 761, 773.
Cruger v. *Armstrong, et al.* 3 Johns Cas. 5.
Tassel & Lee v. *Lewis*, 1 Lord Raymond 743.
1 Parsons Notes and Bills, p. 261.
Whitaker v. *Hartford R. R.* 8 R. I. 47.
State ex rel. v. *Pacific*, 61 Mo. 159.
Pease v. *Cornish*, 19 Maine, 193.
Dalrymple v. *Whitingham*, 26 Vt. 346.

10. By making the bonds and town orders payable at State Treasury, Springfield, instead of the treasury of the town as shown in the declaration, the officers exceeded their authority, and said instruments are therefore void.

People ex rel. v. *Peoria & O. R. R.*, 22 Ill. 153.

11. The town orders sued on, being detached, could not be received in evidence separate from the bond to which they belonged; our objection to their being received in evidence without producing the bonds should have been sustained. Bill of exceptions. (Rec. 17.)

Chap. 3, § 3, 4, Gross Ill. 1869, cases cited, *supra.*
Crosby v. *N. L. & N. R. R.*, 26, Conn. Rep. 121.
Rose v. *Bridgeport*, 17 Conn. Rep. 243.

14. The Court erred in holding that the bonds and town orders sued on drew interest from maturity, and in allowing interest thereon in the judgment under review, they being issued by a municipal corporation.

Madison Co. v. *Bartlett*, 1 Scam. 67
The People v. *Bartlett*, 1 Scam. 67
Pekin v. *Reynolds*, 31 Ill. 529.
Chicago v. *People*, 56 Ill. 327, 334.
Pike County v. *Hosford*, 11 Ill. 170.
Chicago v. *Allcock*, 86 Ill. 384.
People v. *Tazewell Co.*, 22 Ill. 147.
Johnson v. *Stark Co.*, 24 Ill. 75.
Robbins v. *Co. Court*, 3 Mo. 57.
State ex rel. Jeffries v. *Town of Pacific*, 61 Mo. 155.
Skinner v. *Platt Co.* 22 Mo. 437.
2 Daniels on Neg. Insts., § 1514.
Cases cited Points 8 and 9.

13. The Court erred in allowing interest on the bonds sued on at ten per cent. per annum after maturity.

Holden v. *Freedmans Sav's Co.*, 100 U. S. 72.
Benhizel v. *Tiernan*, 22 Wall. 170.
Nat. Bank v. *Mech. Bank*, 94 U. S. 337.
Brewster v. *Wakefield*, 22 How. 118.
2 Daniels Neg. Insts. § 1514.
So. Park Com'rs v. *Dunlevy*, 91 Ill. 54.

ARGUMENT.

One of the leading questions in this case is whether the Town of Ohio had authority to make the subscription and issue the bonds and interest warrants in question. The Act of 25 March, 1869, is invalid, as we contend, for three reasons:

a. Its existence as an Act of the General Assembly depends upon whether it was passed in a constitutional manner.

Sec. 21, Art. III. Illinois Constitution of April 1, 1848, reads thus:

"Bills may originate in either house, but may be altered, amended, or rejected by the other; and on the final passage of all bills the vote shall be by ayes and noes and shall be entered on the journal, and no bill shall become a law without the concurrence of a majority of all the member elect in each house."

R. S. Ill. 1874, p. 39.; R. S. 1877, p. 39.

Sec. 23 reads thus:

"Every bill shall be read on three different days in each house * * and every bill having *passed both houses* shall be signed by the speakers of their respective houses; and no private or *local law*, which may be passed by the General Assembly shall embrace *more than one subject*, and that shall be expressed *in the title*. *Id.*

In *Binz* v. *Weber*, 81 Illinois, 288, the Supreme Court say: "A controlling consideration in adopting these constitutional provisions was to guard against inconsiderate legislation. The practice of passing bills by their titles, without being read at large in the two houses had grown into a common practice. Bills were passed by their titles and members supposing their titles truly stated the pro-

visions of the bills, voted for them without learning their provisions. In this manner vicious legislation obtained. It was to prevent this practice in part at least that this constitutional provision (Sec. 23) was adopted.

In the same case, the same Court, WALKER, J., say: "By giving effect to this provision, no portion of a bill, *not germane to its general object*, or *not expressed in the title when passed* through *the two houses*, could acquire the force of a law. *Only the portions of a bill expressed in the title when passed are constitutionally adopted.* The title adopted after the passage of the bill, is *no part of the law*, nor does it enlarge, limit, or control the law. The title to a bill is an essential part of the bill, and under the Constitution every bill *must* have a title, and such title must *truly state* the object of the bill. Under this constitutional requirement (§ 23) we must look to the title of this *bill as it passed each house*, and not to the title of the act after its adoption, to learn what portions of its provisions are constitutional. By *thus* applying these provisions to the passage of laws, we have no doubt we shall effectuate the intention of the framers of that instrument." In *Larrison* v. *Peoria, etc. R. R.* 77 Ill. 11, "it was said that a title to a bill was not essential, but on further argument and reflection, we are satisfied that we were wrong, as the *Constitution has made it indispensible*," and that opinion in that respect must be modified.

The same doctrine has since been affirmed, and approved as applicable to the Constitution of 1870, by which it is made to apply to all public laws. *Johnson* v. *The People*, 83 Ill. 435.

The Journals of the Senate and House of Representatives of Illinois, for the 26th General Assembly, which it is claimed passed the act in question, were offered in

evidence by both parties, duly certified, and preserved in the bill of exceptions. (Rec. 21, 26.)

The *Senate* proceedings appear, *ante* p. 1, and show that as reported to the Senate from the House, read a first, second and third times in the Senate, and *as it passed the Senate*, the bill was "An Act to amend an act, entitled an act, to incorporate *The Grand Trunk Railway;* also, "ordered that *the title be as aforesaid*," etc. (Rec. 24-25), and the bill was reported back to the house *by that title* as shown by the *House* Journal. (Rec. 23 Top of page.)

These Journals were kept separately by separate officers, and that there might be no question about the matter, the Secretary of State, in whose custody they are kept by law, certifies, "And I further certify that I am unable to find *any evidence of the passage in said Senate of* an act under the title of "An Act to amend an act, entitled 'An Act to incorporate the Illinois Grand Trunk Railway.'" (Rec. 26.) Such a certificate is made by Statute competent evidence. *Ryan* v. *Lynch*, 68 Ill. 163.

It is therefore conclusively established from the evidence, in which there is no conflict, that instead of the act as printed in the Statute book ever having been passed in the manner required by the Constitution, one bill, by one title, passed the House; and another bill, by another title, passed the Senate. We have no means of ascertaining what each bill contained, as they are not shown in the Journals.

By some legislative *legerdemain*, the Speaker of each House was induced to certify to the passage of these bills by the title given in the House. And when the similarity between these bills, and the difficulties in the way of detecting or preventing such a deception, are considered the necessity for adhering strictly to the wholesome safe-

guards provided in the Constitution for the protection of the people, becomes imperative.

By what process of legal chemistry can two such incompatible ingredients be blended, and "An Act to amend the Charter of the Grand Trunk Railway," for which senators cast their votes in the Senate, and by which title alone it passed, be united with an "Act to amend the Charter of the "Illinois Grand Trunk Railway," by which title alone the bill was voted for and passed the House, especially when the great fundamental law forbids it?"

This case, therefore, is like *Ryan* v. *Lynch*, *supra*, and *Miller* v. *Goodwin* 70 Ill. 659, in each of which the Supreme Court of Illinois held an act *void*, because the journals failed to show it ever passed the Senate as required by the Constitution. These cases were recognized and approved by this Court in *Town of South Ottawa* v. *Perkins*, 94 U. S., 4 Otto, 261, Mr. JUSTICE BRADLEY speaking for the majority of the Court in an exhaustive opinion collating and reviewing all the Illinois authorities on the subject.

The bill under consideration being subject to the same infirmity must share the same fate. In the language of this Court, in *Town of South Ottawa* v. *Perkins:* "When once it became the settled construction of the Constitution of Illinois that no act can be deemed a valid law, *unless by the Journals* of the legislature *it appears* to have been *passed by both houses*, it became the duty of the courts to take judicial notice of the journal entries in that regard." On general principles the question as to the existence of a law is a judicial one, and must be so regarded by the Courts of the United States, (94 U. S., 4 Otto, 268.)

b. But the act does not express *its subject in its title*,

and is therefore void under sec. 23, art. 3, *supra*. The language is "no private or local law shall embrace but one subject, and that shall be expressed in the title." "Private or special statutes relate to certain individuals or particular classes of men," (Sedgwick on Statutory and Const. Law, p. 30,) or as the Supreme Court of Illinois define it, "a local or special statute is limited in the objects to which it applies," (*People* v. *Wright*, 70 Ill. 388.) Such a provision in a constitution is mandatory. (Cooley, Const. Limitations, §§ 81, 83, 149.)

People v. *Lawrence*, 36 Bar
Protho v. *Orr*, 12 Geo. 36
I. C. R. R. v. *Potts*, 7 Ind.
People v. *Thome*, 35 Ill. 121
State v. *Miller*, 45 Mo. 495.
Weaver v. *Lapsey*, 43 Ala.
Cutlip v. *Sheriff*, 3 W. Va. 58
Tuscaloosa Bridge Co., 41 Ala
Stuart v. *Kinsella*, 14 Minn.

The *real subject* of the act, judging from the language used, was to authorize certain towns to subscribe for stock in aid of a railroad, issue bonds therefor, fix the amount and rate of interest, and authorize the levy of a tax to pay the same. The "Illinois Grand Trunk Railway" is named *once* therein (third line of first section), but merely to indicate geographically the towns to be authorized, while the act named in the title, which it falsely pretends to amend, is neither referred to directly or indirectly in the act. Neither is any authority thus conferred on the railroad company which it did not possess without it.

"Amend means to correct, to supply a defect, to improve or make better by some addition of what is wanted,

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Cutlip v. *Sheriff*, 3 W. Va. 588.
Tuscaloosa Bridge Co., 41 Ala. 9.
Stuart v. *Kinsella*, 14 Minn. 524.

Lockport v Gaylord 61 Ill. 276.
Middleport v Aetna Life 82 Ill 566.

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"Amend means to correct, to supply a defect, to improve or make better by some addition of what is wanted,

as well as by expunging what is wrong, as to amend a bill before the legislature."—Webster.

This Company was chartered in 1867, 2 Priv. Laws Ill. 1867, p. 595. It therefore possessed the right to "approve," or "accept" or reject subscriptions to its capital stock, no matter by whom made, and the act under consideration does not even purport to confer any additional power or authority whatsoever upon the company. Wherein, then, does this act in the least degree "amend" the act to incorporate the Illinois Grand Trunk Railway? The title no more "expresses the subject" of the act than the title of this suit indicates the questions which form the subject of litigation therein. The play is "Hamlet" in the title, but it is wholly omitted on the stage. This general assembly of 1869 granted forty-eight new railroad charters, gave "new privileges" to sixty others, and "authorized subscriptions" in aid of twenty more. (2 Priv. Laws, Ill., 1869, Index title "Railroads.")

There is therefore no such dearth of special charters, as to induce presumptions in favor of this bill, beyond what is shown by the journals, in order to give it vitality, even if it was proper to do so.

Under the Constitutional test requiring it to have the same title in passing each house, the bill failed to become a law. *Binz* v. *Weber*, 81 Ill., *supra*.

Nor is it any answer to this argument that the two bills purport to have the same number. There is no law requiring a number, or authorizing it. The fundamental law requires *a title*, as the bill passes the two houses. No device or expedient can supply its omission.

In *The People ex rel* v. *Institution of Protestant Deaconess'*, 71 Ill. 229, the Supreme Court of Illinois, in testing a special act by this section 23, uses the following language:

"The purpose of the constitutional provision, was that such a private or local act should not only embrace but one subject, but that the title of the act should afford *some information* of the *subject* of it. The information which would *naturally* be *conveyed* by the title of this act would be that the subject was one local to Chicago. There might have been a willingness so far as respected Chicago to grant * exemption from taxation, etc., * when the idea would not have been entertained for a moment to extend such exemption and privileges into all the 102 counties in the State in which the corporation might choose to establish a charitable institution, as in the construction contended for by appellee. If appellee's construction be the true one, then the title as indicative of the subject of the act would have been deceptive, and as we would view it would be *in fraud* of the constitutional provision." Id. 233.

O'Leary v. *County of Cook*, 24 Ill. 537.
Erlinger v. *Boneau*, 57 Ill. 94.

So in this case the title was intended to deceive and undoubtedly had that effect.

The rule in relation to acts of this character is that being grants from the State, Courts will construe them strictly.

Mills v. *County St. Clair*, 2 Gilm. 198.
Case cited above, 71 Ill. 233.
St. Clair Co., Turnpike Co. v. *The People*, 82 Ill. 174.

Whatever is not unequivocably granted is withheld. Sedgwick Stat. and Cons. L. 338–9.

The rule in this class of cases is thus laid down by Cooley:

"If by striking from the act all that relates to the ob-

ject not indicated in the title, *that which is left is* complete in itself, sensible, capable of being executed, and wholly independent of that which is rejected, it must be sustained as constitutional. The principal questions therefore will be * whether the other objects in the act are so intimately connected with the one indicated in the title, that the portion of the act relating to them cannot be rejected and leave a complete and sensible enactment capable of being executed.

Cooley Constl. Lim. * p. 149.
People ex rel. v. *Institution, supra*, 71 Ill. 233.
Mewherter v. *Price*, 11 Ind. 199.

But if this cannot be done the whole is *void.*

The People v. *Mellen*, 32 Ill. 181.
Binz v. *Weber*, 81 Ill. 288.

We have seen that the only thing authorized by this act was the subscription of certain towns to rail road stock, the issuance of bonds and taxation to pay the same; we have also seen that this company had a right to accept without this act, and that no rights were really conferred by the act upon the company. It is manifest therefore that the authority to these towns to vote, to subscribe, issue bonds and levy taxes, not being germane to the pretended subject of the bill, are *void*, and thus emasculated, nothing is left of the bill for the title to act upon, hence the whole is void.

c. But assuming for purposes of argument, that the infirmities just shown can be cured in some miraculous manner, there is still another equally fatal.

Art. IX. § 5, Illinois Constitution 1848, provides: "The corporate authorities of counties, townships, school districts, cities, towns and villages, may be vested with power to assess and collect taxes for corporate purposes, such

taxes to be uniform in respect of persons and property within the jurisdiction of the body imposing." * *

Sec. 1 of the Act under consideration authorizes "any * town * to become subscriber to the stock * and issue bonds therefor * the proposition for said subscription having been first submitted to *the inhabitants* of such * town * and approved *by them*." (Rec. 16.)

Art. VI. § 1, Constitution 1848, provides: "In all elections every white male 'citizen' above the age of 21 years, having resided in the State one year next preceding any election, shall be entitled to vote at such election, and every white male 'inhabitant' of the age aforesaid who may be a resident of the State at the time of the adoption of this Constitution (M'ch 6, 1848) shall have the right of voting as aforesaid, but no such 'citizen' or 'inhabitant' shall be entitled to vote except in the district or county in which he shall actually reside at the time of such election." R. S. Ills. 1874, p. 51–53.

The word "inhabitant" is used with a different signification from the word "citizen," or "elector," not only in the Constitution of 1848, but in that of 1818. See Const. 1818, Art. II, §§ 5, 27, 29, 31; Art. V, Art. VII, Art. IX, § 8; schedule § 12, R. S. 1874, p. 32–40; Const. 1848, Art. III, § 3, 4, 6, 8; Art. VI, § 1; Art. VII, §§ 2, 4, 7; Art. VIII, § 1; Art. IX, § 1; Art XI, § 1.

Citizens and electors are synonymous, and are either native or naturalized. *Mills* v. *McCabe*, 44 Ill. 194.

"Inhabitants" are synonymous with residents, but are different from "electors." *Supervisors Tazewell* v. *Davenport*, 40 Ill. 197.

Of upwards of fifty acts of the General Assembly of 1869, contained in the same volume with the one under consideration, by which municipal corporations were permit-

ted to subscribe in aid of rail roads, all except this expressly require the question to be submitted to the "qualified electors," or "legal voters," two (p. 75 and 208,) to the "legal voters *and tax payers.*" While this is the only *act* which *in terms* directs that all "inhabitants," including, of course, women and *resident aliens*, shall be permitted to create a debt upon the taxable property of the town. This was clearly in conflict with the Constitutional provisions quoted, and conferred no rights whatsoever.

Cooley's Const'l Limitation, § 65.
Thomas v. *Owens*, 4 Md. 189.
Matter of Dorsey, 7 Porter, 293.
Rison v. *Farr*, 24 Ark. Rep. 161.
St. Joseph R. R. v. *Buchanan Co. Court*, 39 Mo. 485.
The State v. *Williams*, 5 Wis. 308.
Monroe v. *Collins*, 17 Ohio, N. S. 665.
The State v. *Symonds*, 57 Maine, 148.
The State v. *Staten*, 6 Cald. 243.
Davis v. *McKeeley*, 5 Nev. 369.
McCafferty v. *Guyer*, 57 Penn. St. 109.

II.

Nor would a power, in terms granted to the "inhabitants" of a locality be any authority to, or binding upon the "legal voters" of such locality.

Municipal officers cannot rightfully dispense with any of the essential forms of proceedings prescribed by the Legislature for their action in the matter of a subscription. *McClure* v. *Township of Oxford*, 92 U. S. 432.

And of these, all must take notice at their peril.

Pendelton v. *Amy*, 13 Wall. 297.
Kennicott v. *Supervisors*, 16 Id. 452.

St. Joseph Township v. *Rogers*, 16 Id. 644.
Town of Coloma v. *Eaves*, 92 U. S. 484.
South Ottawa v. *Perkins*, 94 U. S. 262.
Dillon on Munic. Corp. 88 § 42.
Miller v. *Goodwin*, 70 Ill. 663.
Wadsworth v. *Supervisors Eu Clare*, *supra.*
Allen v. *City of Louisiana*, *supra.*

"A power to create a debt by a municipality must be conferred by grant of the law-making power, and when made, and the power conferred, it must be strictly pursued.

If a particular mode of subscription is prescribed, the municipality cannot adopt a different mode, and if the power is conferred on one set of officials or individuals, *it cannot act* through or by a different set of officers or persons. The municipality can have no discretion nor can they adopt a mode they deem better adapted to accomplish the end. * The power then having been conferred on the County Court, it could alone act in carrying out the power. No *other* functionary body, or individual, could act simply for want of power." *Gaddis* v. *Richland Co.*, 92 Ill. 123, 4.

The Legislature has no power to grant the right of corporate or local taxation to any other persons than the corporate authorities of the municipality to be taxed.

Marshal v. *Silliman*, 61 Ill. 218.
Harwood v. *St. Clair Drainage Co.*, 53 Ill. 130.
Hessler v. *Drainage Co.*, 53 Ill. 105.
Livingston v. *Wider*, 53 Ill. 302.
People ex rel. v. *Mayor of Chicago*, 51 Ill 17.
Cited with approval and followed in *Town of Englewood* v. *Marcy*, 92, U. S. 289.
Barnes v. *Town of Lacon*, 84 Ill. 461.
Wiley v. *Silliman*, 62 Ill. 170.

The foregoing cases, except that in 84th, were quoted with approval and recognized by this Court, through Mr. Justice DAVIS in *Township of Elmwood* v. *Marcy*, 92 U. S. 292, who, after quoting the language used in *Livingston* v. *Wider*, *supra*, remarks: "The main doctrines of these cases were not new, but had been settled by the repeated adjudications of the Supreme Court, and that learned tribunal has given no decision at variance with them (p. 293) * We have always followed the highest Court of the State in its construction of its own constitution and laws. * There has been no conflict of judicial opinion in Illinois on the controlling question in this suit, but on the contrary, settled uniformly. As these concurring decisions of the court of last resort in that State are grounded on the construction of its statutes it is the duty of this court to conform to them. (294–295.)

We further held, that by corporate authorities, as used in this clause of the Constitution must be understood those municipal officers who are either directly elected by the people or appointed in some mode to which they have given assent."

Commissioner v. *Bolles*, 94 U. S. 104.
Commissioners v. *Jaundry*, Id. 202.
Commissioners of Park, Id. 278.
County of Warren v. *Marcy*, 97 U. S. 96.

III.

The bonds were not "issued by the corporate authorities and the Supervisor and Town Clerk of the Town of Ohio," but by the two last named officers alone.

In *Marshal* v. *Silliman*, commenced in May, 1869. The Supreme Court of Illinois, LAWRENCE, J., say: "The Town Supervisor and Town Clerk who issued these

bonds do *not represent a township* as the Board of Trustees represent an incorporated town, or the Common Council a city. The Supervisor and Town Clerk are *but a part of the corporate authorities.* They have no power of taxation, nor power of *themselves,* to bind the town in any way.

In *Livingston* v. *Wider*, 53 Ill. 304, we said that the Police Commissioners were not the corporate authorities of East St. Louis, * and therefore the Legislature could *not give them* the power of taxation by creating a debt binding the city. So of the Supervisor and Clerk. Though elected by the people, *they were not elected for the purpose of creating a debt or imposing a tax,* and the Legislature could not clothe these two officers without the consent of the people with a discretionary power of creating a debt, *because they are not of themselves the corporate authorities* in the sense of the Constitution." 61 Ill. 226.

In *Livingston* v. *Wider*, 53 Ill., 304, the same Court, LAWRENCE, J., say: "We held in *People ex rel. McCagg* v. *Mayor of Chicago*, 51 Ill. 17, same, *ex rel. Wilson* v. *Solomon*, Ib. 37, same, *ex rel. South Park Commissioners* v. *Com. Council of Chicago*, Ib. 85, and *Harward* v. *St. Clair Drainage Co.*, Ib. 130, * that this section, Art. IX, § 5, was to be construed as a limitation upon the power of the Legislature to grant the right of corporate or local taxation to any other persons than the corporate or local authorities."

It is the established ruling of this court that municipal corporations may always show and insist that the precedent statutory conditions presented by the act of authorisation have not been complied with, except when the regular constituted authorities of the town have decided that such conditions have been performed, and such decision appears in the recitals of the bonds.

Town of Coloma v. *Eaves*, 92 U. S. 484.
Town of Vienna v. *Mendock*, Id. 494.
Marcy v. *Township of Oswego*, Id. 637.
Humboldt Township v. *Long et al*, Id. 642.

The language used in this Act, is different from that of any case yet reported.—"The corporate authorities and the Supervisor and Town Clerk, and in ascertaining its meaning, we must give effect, if possible, to every part.

If we look to the township law we find:

"The *Supervisor, Town Clerk, and Justices of the Peace* of a town (or in the absence of either, the assessor, or collector, or both,) *constitute the Board of Auditors* to examine and audit all claims against their respective towns. Said Board, *or a majority of them*, shall make a certificate, *signed by a majority of the Board*," etc.

Gross' Stat. 1869, Chap. 103, Art. X., § 1, *et seq.*

The Justices of the Peace, Supervisor and Town Clerk, are a Board appointed to decide when vacancies exist, and to fill vacancies in certain offices.

Gross' Stat. 1869, Chap. 103, Art. VII., § 123.

Also to accept resignations. Id. § 4.

The Supervisor, Assessor and Town Clerk are made a Board of Health, with certain defined powers. Id. Art. X., § 1.

It is manifest, therefore, that the duties of managing the business of a town are not vested in any one set of officers, as "corporate authorities" like a city, but the policy of the law has been to reserve control in the peopeople; legislative department—the voters of the municipality at their annual town meeting.

Recurring again to the Township Law we find: "The annual town meeting is to be held on the first Tuesday in

April, in each year, after ten days notice." Art. IV., Sec. 1.

"The place of holding same shall be fixed by the voters at their annual town meeting." Id.

"The electors of each town shall have power at their annual town meeting, * to direct such sum to be raised in such town for prosecuting * suits or for any other purpose, as they may deem necessary." * Id. Art. IV., Sec. 4.

To take measures and give directions for the exercise of their corporate powers." Id. § 5.

The conclusion, therefore, is irresistible that by the term corporate authorities, as used in this Act, either these town boards were intended, or that the voters themselves—the legislative body of the town—should decide whether the vote of the inhabitants had been for subscription, and direct it to be made and the bonds issued. The reference to the Supervisor and Town Clerk would seem to indicate that the latter course was intended, that *two votes* were necessary to carry out the provisions of the Act, one by the inhabitants and one by the corporate authorities;" for, to use the language of the Act, "If a majority of said votes shall be for subscription then the 'corporate authorities' and the Supervisor and Town Clerk * shall cause said subscription to be made."

How cause it to be made? Manifestly by the voters selecting certain persons, at the annual or some special town meeting called under § 1 to unite with the other town officers, or act separately in issuing the bonds.

We have seen that by the Constitution the corporate authorities *i. e.* legal voters are vested with power to create a debt or levy a tax. The Legislature say in effect, the 'inhabitants,' and 'corporate authorities,' this last was

inserted to save its constitutionality, and both are in terms to pass on the question. The Legislature did not specify how the latter should pass on the question, because it was already provided by general Statute.

The case is like *Allen* v. *City of Louisiana*, *supra*, where this Court, through Chief Justice WAITE, say: "In the construction of a statute, every word is, if possible, to be given some effect. It is not to be presumed that the Legislature intends any part to be without meaning. In the light of these maxims of interpretation, the substantial object of this section, evidently, was to *limit the power* to subscribe to the stock of said railroad companies * more than had been done by the Constitution. Under the Constitution, a two-third vote of the qualified voters, taken under the authority of law, would be enough; but under the charter, the two-thirds vote of the qualified voters required by the Constitution, and a *majority vote of the tax payers* were both necessary." 13 Chicago Legal News, 185.

In *ex parte*, Salisbury, 16 Ill. 350, the Supreme Court of Illinois, in order to uphold a Statute, construed it as if the constitutional provision had been in terms incorporated into it.

See also In. Re., Smith, 16 Ill. 347.

If, therefore, this act is constitutional, two elections were necessary, and it is conceded there was only one.

In either case the bonds are *void*.

IV.

The subscription was not accepted, nor bonds issued, until after the Constitution took effect.

In *Town of East Oakland* v. *Skinner*, this Court, quoting the provision of the Constitution of July 2, 1870, through Mr. Justice HUNT, say:

"The subscription in question *was made after July* 2, 1870. * The record shows that a vote of the people had before that time been taken, but it does not show that it was authorized under existing laws. * There can be no *bona fide* holding where the Statute did not in law authorize the issue of the bonds. The objection in such case goes to the point of power. There is an entire want of jurisdiction over the subject."

94 U. S. 258.

Where municipal bonds bear date since the Constitution of 1870, the burden of proof rests upon the plaintiff to prove when they were issued, and the authority for the same.

Jackson County v. *Brush*, 77 Ill. 59

Barnes v. *Town of Lacon*, 84 Ill. 461.

In *Aspinwall* v. *Commissioners of Davess*, 22 How. Rep. 378, this court, through Mr. Justice NELSON, say: "It would be difficult to mention a subject of legislation of more public concern or in a greater degree affecting the good government of the county than that involved in this inquiry. The power conferred by this charter among other things embraced the power of taxation. * The Acts of 1848 and 1849, (charter) already referred to, made *it the duty* of the Board of Commissioners *to subscribe* for the stock if a majority of the qualified voters, at an election, determined in favor of subscription. * The election was March 1, 1849. The constitution took effect Nov. 1, 1851. But the subscription was not made until 10th September, that date. * The Court holds that a subscription was necessary to create a contract, binding on the county on one side, to take the stock and pay in bonds, and on the other to transfer the stock and receive

the bonds, *until the subscription* is *made* the contract is unexecuted, obligatory upon neither."

22 Howard, 378–9.

In *Wadsworth* v. *Supervisors of Eau Claire Co.*, Oct. Term, 1880, this court, through Mr. Justice HARLAN, reaffirm and apply the doctrines announced in *Aspinwall* v. *Commissioners*, 22 How. 364: "It is clear that there was no binding agreement or contract between the railroad company and the County of Eau Claire, by which the latter became legally bound * to execute and deliver bonds in aid of the construction of this road. The Act neither in express terms or by necessary implication, made it imperative upon the Board to issue bonds in pursuance of the popular vote. * Its legal effect was to invest the Board with power to supplement the expressed will of the people by an issue of bonds.

13 Chicago Legal News, 153.

The mischief sought to be remedied by this constitutional prohibition upon municipalities, is thus defined by Mr. Justice BREESE, in one of the first cases arising after the adoption of the Constitution of 1870: "It was a declaration of the people on July 2d, 1870, that from and after that day, no matter what may become of the New Constitution (which would not take effect until Aug. 8), no county, city, town, township, or other municipality, shall ever become subscriber to the capital stock of any railroad, or private corporation, or make donation to, or loan its credit in aid of such corporation. The passion for subscriptions by the municipalities to every conceivable project presented in corporate form was so violent and prevailed so extensively throughout our State as to demand a speedy, prompt and efficient remedy. * To such an extent had it progressed prior to July 2d, that counties,

towns and cities in this State had become involved to the extent of millions of dollars, for which the property and the labor of the people had become forever pledged. * The increasing demand for railroads, many of those enterprises clamorously thrust upon the people, admonished the convention they could not be too prompt in arresting the tide. A delay of a single week might have produced *insolvency* of these municipalities. * Many who voted for these subscriptions, * did not possess a dollar of their own, or property to be taxed, but by furthering such enterprises produce jobs and contracts by which they would profit as individuals, with none of the burdens of a tax payer. It is no great effort of liberality for a peniless man to vote money out of the pockets of his neighbor. It was in condemnation of such a system the convention so promptly interfered." *Schall* v. *Bowman*, 62 Ill. 324, 5.

It is a well settled rule of construction of grants by leglative corporations, public or private, that only such powers and rights can be exercised by them as are clearly comprehended within the words of the act, or derived from necessary implication having regard to the object of the grant, *any ambiguity or doubt* must be resolved in *favor of the public.*

1 Dillon on Munic. Corp., 175, Ch. V, § 55. Cases cited in note 1.

NELSON, J., in *Minturn* v. *Lorne*, 23 How. 435, 436.

Thompson v. *Lee Co.*, 3 Wall. 321.

Thomas v. *Richmond*, 12 Wall. 349.

In *County of Moultrie* v. *Savings Bank*, 92 U. S. 634, this court through Mr. Justice STRONG, affirming a judgment for certain bonds issued after July 2, 1870, where there was an *agreement to subscribe* in April, 1870, say " *We do*

not assert that this constitutional provision did not abrogate the authority of the Board of Supervisors to make a subscription for railroad stock. *On the contrary we think it did.* But we hold that contracts made under the power while it was in existence were valid contracts and that the obligations assumed by them continued *after the power to* enter into such contracts was withdrawn.

92 U. S. p. 635–6.

In that case the bonds recited the Act, and the Court examine it and the county record, and show that though an innocent purchaser was bound to look at both yet that he would find an agreement for subscription before the new constitution.

We have thus far treated this subject as if the proposition of the town by the vote of June 25, had remained open for acceptance, and no action taken which we conceive would be cut off by the constitution

But the fact is shown in the record, that the company refused to accept in writing, and made a new proposition to the town. (p. 7. ante.) If there was no other point in the case, this is conclusive, as the act only authorizes one vote and one acceptance. The vote was had and was rejected. Thus the power was exhausted, and any further action is *ultra vires.*

Illinois Midland R. R. v. *Wayneville,* 9 Chi. Leg. News 364.

Barnes v. *Town of Lacon,* 84 Ill. 461.

V.

It was error to admit the *coupons or town* orders in the evidence.

It will be observed that no reference is made to the bonds in the interest warrants or the authority claimed

for issuing the same; there are no recitals, but merely an order or check on the Supervisor, who is by law treasurer of the town (Art. VIII, § 1, Chap. 103, Gross Stat. Ill. 1869), drawn by two town officers, the Supervisor and Town Clerk. (Ante p. 7.)

The plaintiff in error being a mere *quasi* corporation with extremely limited powers, had no general authority to issue such orders, and when issued, they could not become negotiable paper, and those who claim such authority must aver and prove it.

1 Daniels Neg. Insts., § 606, 7.
East Oakland v. *Skinner*, 94 U. S. 245.
Rumford v. *Wood*, 13 Mass. Rep. 193.
The Floyd Acceptances, 7 Wall. 666.
Denning v. *Smith*, 2 Johns, 244.
Lee v. *Monroe*, 7 Cranch, 36.
State v. *Hastings*, 10 Wis. 518.
Drake v. *Phillips*, 40 Ill. 388.
Township of Fishkill v. *Beekman Pl. R. Co.* 22 Barb. 634.

Their whole capacities, powers, and duties, are derived from legislative enactments.

Shepley, Ch. J., *Hooper* v. *Emery*, 14 Maine, (2 Shep.) 375.
Baldwin v. *North Bradford*, 32 Conn. 47.
Booth v. *Woodbury*, Id. 118.
Webster v. *Harwinton*, Id. 131.

The declaration counted on these instruments merely as issued by a general corporation, or individual, there was no averment of power to issue; ~~or that any bonds were over-issued~~, or that these orders had ever been attached to bonds, neither was there any averment of presentation at place of payment.

In *People ex rel.* v. *Peoria & Oquawka R. R.*, 22 Ill. 153, the Supreme Court of Illinois, WALKER, J., say: "States, counties and corporations, created for public convenience only, are not required to seek their creditors to discharge their indebtedness; but when payment is desired, the demand should be made at their treasury. That is the only place at which payment can be legally insisted upon, and it is the *only place where the Treasurer (Supervisor) can legally have the public funds* with which he is entrusted. * To pay, elsewhere, would require the employment of agents; transmission of public funds at risk of loss, and at considerable expense in charges insurance and discounts, which are not incident to its payment at the treasury.

See cases cited under Points 8, 9, 11.

Our objections, therefore, should have been sustained. See exceptions taken. (Rec. 17.)

VI.

The Court erred in allowing interest.

No case in Illinois has ever been passed upon in this Court involving the question of interest on coupons issued by municipal corporations, though the point has been made in several cases from other states. The rule on this subject, established by the Supreme Court of Illinois at an early day, was adverse to the allowance of interest in such cases.

In *Pekin* v. *Reynolds*, 31 Ill. 259, the Court, WALKER, J., holds, "That all debts of municipal corporations are payable at the treasury of the body; that *interest on coupons* cannot be recovered unless there is a special agreement to that effect. Whatever power these corporations may possess to contract for payment of interest, in the absence of

any express legislation on the subject, *we are of opinion* that their *indebtedness in the absence of such agreement does not bear interest.*"

If such instruments could bear interest in any event without an express agreement, it could only be after a proper demand is made; until then they are not in default. They are not like individuals bound to seek their creditors for payment.

Pekin v. *Reynolds*, 31 Ill. 529.
To the same effect is *People* v. *Tazewell, Co.*, 22 Ill. 147.
People ex rel. v. *Peoria & O. R. R.*, 22 Ill. 153.
Johnson v. *Stark Co.*, 24 Ill. 75.
Robbins v. *Co. Court*, 3 Mo. 57.

Counties are not liable to pay interest on orders or warrants.

Madison Co. v. *Bartlette*, 1 Scam. Ill. 67.
State ex rel. v. *Pacific*, 61 Mo. 155.
Chicago v *People ex rel.*, 56 Ill. 334,
Skinner v. *Platt Co.*, 22 Mo. 437.

And this position has been adhered to by an unbroken line of decisions, which, as held in *Elmwood* v. *Marcy*, 92 U. S. 292, are binding on this Court.

Interest in Illinois is a creature of the Statute. *People* v. *Reynolds, supra.*

It is a general rule of law that interest, purely as interest, never draws interest, even if in terms payable annually.

Hastings v. *Wiswall*, 8 Mass. 455.
Wilcox v. *Howard*, 23 Pick. 167.
Henry v. *Flagg*, 13 Mich. 64.
Doe v. *Weaver*, 7 Greenleaf, 48.
Barker v. *International Bank*, 80 Ill. 96.
Childers v. *Dean*, 4 Rand, 406.
Howard v. *Bradley*, 1 App. 31.

In a case in Pennsylvania, *Allison* v. *Juniata Co.*, suit was brought upon the following order, identical with these. "Treasurer of Juniata Co.,

Pay to Wm. M. Allison $52.50 for bounty claims. Witness our hands this 18th July, A. D. 1863.

MM. KOHLER,

Attest: JAMES S. COX,

JOHN HAZZARD, Clerk. Commissioners."

The Court, THOMPSON, J., held that "It could not bear interest in any event. It would embarrass county matters much, and complicate accounts greatly if interest were demandable on these orders."

50 Penna. St. 353.

VII.

It was error to allow interest on the bonds.

In the trial below plaintiff offered 52 bonds of $100 each, amounting to $5,200, and 136 coupons of $10 each, $1,360, making a total of principal $6,560. The bill of exceptions shows this was all the evidence, (Rec. 28.) special finding (Rec. 14.) The judgment was for $9,526.29. The interest on the bonds after maturity was computed at 10 per cent. and on the coupons at 6 per cent. a total of $3,016.29 interest.

These with the amount of bonds and coupons makes the amount of judgment. We have seen in considering the previous point that coupons of a municipality do not draw interest after maturity, that a municipality cannot be made liable for interest unless agreed upon, and cannot agree upon interest unless specially authorized by law. The same presumptions obtain, and same reasons exist, for not being liable for interest in the case of bonds as with coupons. By the same reasoning therefore the

bonds and coupons should neither bear interest after maturity. But if there is a distinction in favor of the bonds, then it is submitted that in no event can such interest exceed the legal rate of six per cent. and for reasons given by this court in a recent case from the District of Columbia.

In *Holden* v. *Trust Co.*, 100 U. S. 72, a case arose precisely like this as to the statute law regulating interest, and as to the terms of the instruments sued on. There, as here, the legal rate was six per cent., conventional rate ten per cent. and forfeiture of all interest if more than ten charged. Gross Stat. 1869, Chap. 54, Sec. 9, 10, quoted *supra* p. –

SWAYNE, J. says: "The rule heretofore applied by this court under the circumstances of this case has been to give the contract rate up to the maturity of the contract, and thereafter the rate prescribed where the parties themselves have fixed no rate. Where a different rule has been established it governs of course, in that locality. The question is one of local law. Here the agreement of parties extends no farther than for the payment of the principal, everything beyond that is silent.

If payment is not made, the creditor is entitled to damages. The amount not being agreed upon, the law fixes the amount according to the standard in all such cases. It is *the legal rate of interest* where the parties have agreed upon none. If the parties meant that the contract rate should continue, it would have been easy to say so. In the absence of such a stipulation, such an intendment cannot be inferred." 100 U. S. 73-74.

As to the other objections, urged in the points submitted herewith, it is believed they are sufficiently discussed in that connection to obviate any extended argu-

ment here. Attention is called to them again that they may not be considered as waived.

These considerations, it is believed, require a reversal of the judgment of the Circuit Court.

Respectfully submitted,

ALLAN C. STORY,

For Plaintiff in Error.

OFFICE SUPREME COURT U. S.
FILED
MAR 15 1881
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1880

THE TOWN OF OHIO,
Plaintiff in Error,
vs.
AUGUSTUS FRANK,
Defendant in Error.

No. 259.
Error to the Circuit Court of the United States, Northern District of Illinois.

ARGUMENT FOR PLAINTIFF IN ERROR.

W. C. GOUDY,
For Plaintiff in Error.

CHICAGO, ILL.:
S. J. BRADBURY & SONS, LEGAL PRINTERS, 78 FIFTH AVE.
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ARGUMENT FOR PLAINTIFF IN ERROR.

A statement and assignment of errors has been made by Mr. Story, to which reference is made.

POINTS AND AUTHORITIES.

The rule of evidence was changed by the Constitution of 1870, and the burden of proving the authority to issue bonds and a compliance with the conditions precedent, was thrown on the plaintiff, the presumptions in favor of the action of municipal officers not being sufficient.

Jackson Co. v. *Brush*, 77 Ill. 66–67.
Middleport v. *Ætna Life Ins. Co.*, 82 Ill. 568.
Town of Prairie v. *Lloyd*, 97 Ill. 181.
Town of Windsor v. *Hallett*, Ibid, 205.

I.

The bonds and interest orders were void, because there was no statute authorizing their issue.

1. The act of March 25, 1869, entitled "An act to amend an act entitled an act to incorporate the Illinois

Grand Trunk Railway," which it is claimed authorized the bonds, was not passed according to the Constitution of Illinois.

Const. of 1848, Art. III, §§ 21, 23.
Ottawa v. *Perkins*, 94 U. S., 271, and cases cited.
Binz v. *Weber*, 81 Ill. 288.
Johnson v. *The People*, 83 Ill. 435.

2. The title does not express the subject of the bill, and so is in conflict with the Constitution and void.

Const. of 1848, Art. III, § 23.
Lockport v. *Garland*, 61 Ill. 276.
Middleport v. *Ætna Life Ins. Co.*, 82 Ill. 566.
People v. *Inst. Prot. Deaconess*, 71 Ill. 229.
People v. *Mellen*, 32 Ill. 181.
Binz v. *Weber*, 81 Ill. 288.
Frye v. *Partridge*, 82 Ill. 269.

3. The corporate authorities alone could make the subscription or issue the bonds.

Const. of 1848, Art IX, § 5.
Harward v. *St. Clair Co. Drainage*, 51 Ill. 133.
People v. *Mayor*,, Ibid, 30.
Livingston v. *Wilder*, 53 Ill. 305.
Barnes v. *Town of Lacon*, 84 Ill. 461.
Marshall v. *Silliman*, 61 Ill. 218.
Elmwood v. *Marcy*, 92 U. S. 289.
Schaeffer v. *Bonham*, 95 Ill. 381.

4. The Supervisor and Clerk are not corporate authorities, because they have no power of taxation and creating debts.

Marshall v. *Silliman*, 61 Ill. 218.
Middleport v. *Ætna Life Ins. Co.*, 82 Ill. 567.
Barnes v. *Town of Lacon*, 84 Ill. 461.

Elmwood v. *Marcy*, 92 U. S. 218.
Schaeffer v. *Bonham*, 95 Ill. 381.

5. The act of March 25, 1869, did not authorize an election to be held at which only legal voters could vote.

6. A subscription could not be made or bonds issued without the authority of the legislature, and an election in pursuance thereof.

Barnes v. *Town of Lacon*, 84 Ill. 463.
Allen v. *City of Louisiana*, U. S. Sup. Ct., Oct. T. 1880, 13 Legal News, 185.
Const. 1870, Separate art. on Municipal Subscriptions.
Town of E. Oakland v. *Skinner*, 94 U. S. 258.

7. The word "inhabitants" cannot be read "voters" or "electors."

Const. of 1848, Art. VI, § 1.
Supervisors v. *Davenport*, 40 Ill. 197.
Mills v. *McCabe*, 44 Ill. 194.

8. There was only one election held, and at that one legal electors voted. The inhabitants did not vote.

II.

At the time the subscription was made in January, 1871, it was not authorized under existing laws prior to July 2, 1870, and all other subscriptions being prohibited by the separate section of the Constitution taking effect that day, the subscription was without authority, and the bonds issued void.

Schall v. *Bowman*, 62 Ill. 324.
Township E. Oakland v. *Skinner*, 94 U. U. 256.
Town of Concord v. *Savings Bank*, 92 U. S. 628.

ARGUMENT.

To defeat the bonds in this case, it must appear that there was a want of authority to issue them.

At the threshold, it is important to call the attention of the Court to the fact that these bonds were not signed or issued until after such subscriptions and bonds had been prohibited by a separate article of the Constitution, which was adopted on the 2nd of July, 1870, unless the same had been authorized under existing laws by a vote of the people of the municipality prior to that time. By decisions of the Supreme Court of Illinois it has been held, that in such a case it is incumbent on the plaintiff, who sues on such bonds, to prove the authority to issue them, and a compliance with the terms and conditions of the law conferring the authority. The reason for the rule is that by the fundamental law the policy of the State had been changed. Whatever presumptions might have arisen before such change of policy, in accordance with many decisions of this and other courts in favor of the authority and regularity of municipal bonds, no longer existed. The burden of proof was thrown on the plaintiff.

Jackson County v. *Brush*, 77 Ill. 66, 67.
Middleport v. *Aetna Life Ins. Co.*, 82 Ill. 568.
Town of Prairie v. *Lloyd*, 97 Ill. 181.
Town of Windsor v. *Hallett*, Ib. 205.

On the trial below the plaintiff made no effort to prove a compliance with the conditions of the statute of March 25, 1869, which, it was claimed, authorized the issue of the bonds. He read in evidence the bonds and the interest orders, and proved that the bonds were sold for value in 1871, and rested. He offered no evidence to show that a subscription had been authorized by a vote of the people before July 2, 1870, or that the proposition

had been submitted to the "inhabitants" and approved by them, or that the corporate authorities caused the subscription to be made, or that the subscription had been accepted by the railway company. The Court did not find a compliance with these conditions on the evidence submitted by both parties, and therefore the judgment for the plaintiff was erroneous.

Regardless, however, of the rule as to the burden of proof, I will proceed to discuss the questions of the authority of the Supervisor and Clerk to issue these bonds, and the right of the plaintiff to recover in the Circuit Court.

I.

THE BONDS AND INTEREST ORDERS WERE VOID, BECAUSE THERE WAS NO STATUTE AUTHORIZING THEIR ISSUE.

1. *The act of March 25, 1869, entitled "An act to amend an act entitled an 'act to incorporate the Illinois Grand Trunk Railway,"' which it is claimed authorized the bonds, was not passed according to the Constitution of Illinois.*

The signatures of the presiding officers of each house and the Governor, and the certificate of the Secretary of State are not conclusive evidence of the passage of a bill. The Journals of the legislature may be resorted to for evidence as to the enactment of a law, and if it appears therefrom that the proceedings were not in conformity to the Constitution, the courts will hold the bill did not become a law.

The Constitution required a vote to be taken on the final passage of all bills by ayes and noes and entered on the Journals; and declared that no bill should become a law without the concurrence of a majority of all

the members elect in each house. Const. of 1848, Art. III. § 21.

It is also provided that no private or local law shall embrace more than one subject, and that shall be expressed in the title. *Ibid.* § 23.

On the 28th day of February, 1867, the legislature passed an act entitled "An act to incorporate the Illinois Grand Trunk Railway." 2 Private Laws, 1867, 595.

It is shown by the Journal of the House of Representatives, read in evidence, that a bill entitled "An act to amend an act entitled an act to incorporate the *Illinois* Grand Trunk Railway" was introduced and passed, but no bill of that title was reported to or passed by the Senate. A bill was before the Senate, called a House bill, having the same title except that the word "*Illinois*," is omitted from the title. This must be held to be another and different bill from that voted on by the House. As the title was by the Constitution a material part of a bill, the Journals shown that the act as printed never received the vote of both branches as required by the Constitution.

It is settled by numerous decisions of the Supreme Court of Illinois that the Journals of the legislature may be resorted to for the purpose of overthrowing the *prima facia* evidence of the constitutional enactment of a law by the signatures of the presiding officers and Governor, and the publication of the act among the printed laws; and unless it appears from the Journals that the bill was passed in the manner required by the Constitution, the apparent act will be held to be no statute. These decisions have been collated and the rule of law approved and enforced by this court in *Ottawa* v. *Perkins*, 94 U. S. 271.

If the act relied on as authority to issue bonds never

passed the Senate, it will be admitted that there was no statute to authorize their issue, and that they are void even in the hands of innocent purchasers for value.

The only question which can be raised on this point is as to whether the journals do show a vote on the same bill in both branches.

It may be contended that as the bill before the House was marked H. B. No. 231, and the one before the Senate was marked the same, it is proof that the bill itself was the same, notwithstanding the fact that the title of one was "An act to Amend an Act entitled an Act to Incorporate the *Illinois* Grand Trunk Railway," and the title of the other, "An Act to Amend an Act entitled an Act to Incorporate the Grand Trunk Railway."

There was no provision of the Constitution, or any statute, or rule requiring bills to be numbered; that is the custom of clerks for convenience. But the Constitution did require that every private or local law should not embrace more than one subject, and that should be expressed in the title. Const. of 1848, Art. III. § 23. This was a private and local law. The Supreme Court of Illinois has construed this provision and held that the title is an indispensible part of a bill, and any part of a bill on a subject not expressed in the title mentioned in the body of the bill is void.

The Supreme Court of Illinois has carried the rule so far as to hold that it is the title at the head of the bill when the vote is taken on the passage that is contemplated by the Constitution, and not a title adopted after the vote is taken, as a title for the act of legislation.

Binz v. *Weber*, 81 Ill. 288.

Johnson v. *The People*, 83 Ill. 435.

Therefore a vote in the Senate on a bill entitled an Act to Amend an Act to Incorporate the Grank Trunk

Railway was not a vote on an Act to Amend an Act to Incorporate the *Illinois* Grand Trunk Railway. This is true even if the body of the bill was the same in each house as well as the number. The title of one indicates to the member or senator a certain corporation, and the title of the other a different corporation. The "subject" of one is different from the "subject" of the other. *This is not a question of identification. The question is, was the bill passed according to the Constitution, so as to become a law?*

This is the settled rule of law in Illinois, and under it the bill did not pass the two branches of the legislature as required by the Constitution, and never became a valid statute. The speculation, or even the fact, that there was really one bill, and a clerical mistake made by leaving out the word "Illinois" from the title when it was sent to the Senate, so that the error was carried through that branch, does not help the matter. The rule is imperative that the title shall express to the member the subject on which he is to vote, and failing to do that, the vote is null and void. Not a Senator voted in regard to the charter of the *Illinois* Grand Trunk Railway, but his vote related to the charter of the Grand Trunk Railway.

Reference may be made to *Larrison* v. *Peoria R. R.* 77 Ill. 11, as an authority that the number is evidence of the identity of the bill, even if the name of the corporation differs in the two houses. That case does so hold, and the reason given is that the title was not essential. But that case is expressly overruled by *Binz* v. *Weber*, 81 Ill. 288, because the title was not only essential, but by the constitution indispensable. This is the last expression of the highest judicial tribunal, and it has been approved in *Johnson* v. *The People*, 83 Ill.

435. The Larrison case was decided long after the bonds in controversy were issued and purchased by the appellee, so that no reliance was placed on that decision.

2. *The title does not express the subject of the Bill, and so is in conflict with the Constitution and void.*

The title indicates an amendment to a railway charter; the body relates to cities, incorporated towns, and townships. The subjects are different

The Constitution provides that "No private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be expressed in the title." Art. III, § 23. This was a local and special law. It embraced, perhaps, but one subject, but that is not expressed in the title. The subject of the act is the subscription of stock by certain municipal corporations to the Illinois Grand Trunk Railway. The charter of the railway company is not altered or amended. The change relates to the powers of the municipal corporations. It touches the powers, rights, or duties of the railway corporation in no respect. For these reasons the act is void.

Lockport v. *Garland*, 61 Ill. 276.
Middleport v. *Aetna Life Ins. Co.*, 82 Ill. 565.
People v. *Inst. Prot. Deaconess*, 71 Ill. 233.
People v. *Nellen*, 32 Ill. 181.
Binz v. *Weber*, 81 Ill. 288.
Frye v. *Partridge*, 82 Ill. 269.

3. *The corporate authorities alone could make the subscription or issue bonds.*

Art. IX. § 5 of the Constitution of 1848, prohibited the legislature from authorizing any person to impose a

burden by debt on the township, except the corporate authorities. This is settled law in Illinois.

Harward v. *St. Clair Co. Drainage Co.*, 51 Ill. 133.
People v. *Mayor*, Ibid, 30.
Livingston v. *Wilder*, 53 Ill. 305.
Wilder v. *East St. Louis*, 55 Ill. 136.
Marshall v. *Silliman*, 61 Ill. 218.
Elmwood v. *Marcy*, 92 U. S. 289.

Even if the act, in express terms, authorized the creation of a debt to be paid by the township in any other way than by corporate authorities, the act would be void. To be sustained the act must be construed in harmony with the Constitution in this respect.

As the subscription for stock was made and the bonds in payment therefor were issued by the Supervisor and Town Clerk, the questions presented are these:

First. Did the Legislature authorize the Supervisor and Clerk to make the subscription and issue the bonds?

Second. Are the Supervisor and Clerk corporate authorites within the meaning of Art. IX, § 5 of the Constitution?

By the language of the Act the Supervisor and Clerk could not *alone* subscribe for the stock and issue the bonds. It provides for taking a vote of the inhabitants and then reads: "*If a majority of the voters shall be for subscription then the corporate authorities of said city, town or township* AND *the Supervisor and Town Clerk of said township so voting*, SHALL CAUSE *said subscription to be made.*"

The Legislature understood correctly that the Supervisor and Clerk could not, without the consent of the corporate authorities impose a debt on the town. The Legislature did not indicate who should write the

name of the town to the subscription book or who should execute the bonds, but left the persons to be designated by the corporate authorities and the Supervisor and Clerk, for the statute says, they *shall cause* the subscription to be made and *shall cause* the bonds to be issued. Action was contemplated by which the details of a subscription and bonds were to be settled.

It is important to determine who are corporate authorities of a township.

This question has been conclusively settled by the Supreme Court of Illinois that the corporate authorities, intended by this section of the Constitution, must have the power of taxation and creating debts to be paid by taxes, and if officers they must be elected by the legal voters of the municipal corporation.

Livingston v. *Wilder*, 53 Ill. 305.
Harwood v. *Drainage Co.* 51 Ill. 136.
People v. *Thayer*, Ib. 30.
Barnes v. *Town of Lacon*, 84 Ill. 461.
Marshall v. *Silliman*, 61 Ill. 218.
Elmwood v. *Marcy*, 92 U. S. 289.
Schaeffer v. *Bonham*, 95 Ill. 381.

4. The Supervisor and Clerk are not corporate authorities, because they have no power of taxation and creating debts. They can only make subscriptions of stock and issue bonds when authorized by a majority of the legal voters of the township at a regular or special town meeting or election, and when the legislature has authorized the subscription and bonds upon such a vote.

Marshall v. *Silliman*, 61 Ill. 218.
Middleport v. *Ætna Life Ins. Co.* 82 Ill. 567.
Barnes v. *Town of Lacon*, 84 Ill. 461.
Elmwood v. *Marcy*, 92 Ill. 218.
Schaeffer v. *Bonham*, 95 Ill. 381.

The corporate authorities of a township or town are the legal voters. They alone have the power of taxation and creating debts to be discharged by taxation; they alone come within the definition of the "corporate authorities" intended by § 5, Art. IX of the Constitution as decided by the Supreme Court of Illinois in cases cited *supra*.

It is true that in *Marshall* v. *Silliman*, the Court use the expression that the Supervisor and Clerk are only a *part* of the corporate authorities, but it is manifestly an inadvertent expression. Doubtless it was intended that they are part of the officers—a part of the Board of Auditors. It may be well to examine the Township Organization Statute to see who has the power of levying taxes and creating debts.

In cities and incorporated towns or villages where there is a legislative branch of the municipal government, the power of taxation is exercised by such legislative branch; and in counties, the Board of Supervisors or County Commissioners exercise the power of taxation. But in towns or townships in a township organization system, there are no officers or set of officers empowered to impose taxes or create debts. The power is placed in the legal voters who determine at town meetings or special elections, held in pursuance of law, what debts shall be created and taxes levied. This was the law in Illinois in 1869–1871.

The Supervisor, Clerk, and Justices of the Peace (and in the absence of either the Assessor, or Collector, or both) constitute the Board of Auditors to examine and audit all claims against their respective towns. Gross Stat. 1869, Ch. 103, Art. X, § 1, *et seq*.

The Justices of the Peace, Supervisor and Clerk, are a board to accept resignations and fill vacancies. Ib. Art. VII, § 123.

The Supervisor, Assessor and Clerk, are a board of health. Ib. Art. X, § 1.

But none of these boards could create a debt or levy a tax.

The Statute provides for annual town meetings and declares that:

"The *electors* of each town shall have power at their annual town meetings:

* * * * * * * * *

4. To direct such sum to be raised in such town for prosecuting or defending such suits, or for the support and maintenance of roads and bridges, *or for any other purpose*, as they may deem necessary; and also to authorize and require the Commissioners of Highways to assess a road tax, etc.

5. To take measures and give directions for the exercise of their corporate powers.

* * * * * * * * *

12. To make all such by-laws as may be necessary to carry into effect the powers herein granted." Ibid Ch. 103, Art. IV, § 5.

It thus appears that the corporate authorities of a township having the qualifications required by § 5, Art. IX, of the Constitution, as construed by the Supreme Court of Illinois, in *Marshall* v. *Silliman*, and other cases cited, *supra*, and approved by this Court, in *Elmwood* v. *Marcy*, were the legal voters or electors. It is not contended that the vote should be taken only at an annual town meeting; if the legislature authorized a special election, that is within the Constitution. I may even admit in this case that the Legislature could confer on township officers elected by the voters the power to subscribe and issue bonds.

But it is clear that the Legislature in the act of March 25, 1869, did not confer power on the Supervisor, and Clerk, for it is provided that, "the corporate authorities," *and* Supervisor, and Town Clerk, of the township so voting, shall cause the subscription to be made, and upon its acceptance by the directors of the company, shall cause the bonds to be issued in conformity with said vote.

In view of the decisions cited, it is clear the Legislature intended by the corporate authorities, the legal voters, or electors. That is the only construction consistent with the Constitution. What did the law require? It left to the legal voters, and Supervisor, and Clerk, the question as to creating the liability. The legal voters could express their approval or disapproval of any proposition to subscribe stock, which might embrace the persons who should make the subscription, and if the Supervisor and Clerk concurred, the authority to make the subscription would be established by *the action of the corporate authorities and Supervisor and Clerk.*

It appears by the record that a special election was held Aug, 21, 1869, in pursuance of the provisions of the special act of March 25, 1869, at which the voters voted that the town would subscribe for $40.000 of the stock of Illinois Grand Trunk Railway. Rec. 15, 19.

The bond recited: "This bond is issued under and by virtue of the Charter of said Illinois Grand Trunk Railway, and amendment thereto, and other laws of the State of Illinois, and in accordance with the vote of the *electors* of said township at the special election held Aug. 21, 1869, in accordance with said charter and amendment and laws."

It being conceded that an election was held, at which

the electors or voters voted in favor of the subscription, we are brought to another question.

5. *The act of March* 25, 1869, *did not authorize an election to be held at which only legal voters could vote.*

The act first provides that the proposition for subscription should first be submitted to and approved by the *inhabitants* of the township. It then provides that upon the application of any ten *voters* of the township, it shall be the duty of the Clerk of the Township immediately to call an election *in the same manner* that other elections are called for the purpose of determining whether the township will subscribe.

The *manner* in which other elections are called is fixed by § 9, Art. IV, of the Township Organization Act. Gross Stat. 1869, 744. It is by giving ten days' notice by posting and publication.

The call being made as required by the act of March 25th, 1869, and the township act, and the polls being opened, *who by the act of March 25, 1869, could vote? The inhabitants or legal voters?* If only *legal voters*, then there was a failure by the Legislature to provide for a mode of submitting the proposition to the *inhabitants*, whose consent was a condition precedent. If the *inhabitants* were to vote at this election, then the Legislature failed to provide for the expression of the will of the *legal voters*, who constituted the *corporate authorities* mentioned in the Constitution on the question of subscription.

The statute is as clear as language can make it, that the debt could not be created without the consent of the inhabitants. It does not declare that the question shall be submitted to the legal voters as well as the inhabitants. It therefore seems to force the conclusion that the legislature made no provision for an election by

the legal voters, who alone possessed the power to tax and create debts.

6. A *subscription could not be made or bonds issued without the authority of the Legislature and an election in pursuance thereof.*

Barnes v. *Town of Lacon*, 84 Ill. 463.

Allen v. *City of Louisiana*, U. S. Sup. Court, Oct. T. 1880. 13 Legal News 185.

The Supreme Court of Illinois has held that power could be conferred on village trustees to subscribe without a vote of the electors. But since July 2, 1870, no subscription could be made except authorized by a *vote of the people* prior to that time.

Const. 1870, Sep. Art. Mun, Subscriptions.

Town of E. Oakland v. *Skinner*, 94 U. S. 258.

7. *The word "inhabitants" cannot be read "voters" or "electors."*

The township organization act in force in 1870, provided that the citizens of the several towns of the State qualified by the constitution to vote at general elections should be legal voters in the townships.

Gross Stat. 1869 Chap. 103 Art. 4, § 1.

The Constitution of 1848, which was in force at that time provided that in all elections every white male citizen above the age of 21 and having resided in the State one year next preceding any election, shall be entitled to vote at such election * * * and no such citizen or inhabitant shall be entitled to vote except in the district or county in which he shall actually reside at the time of such election. Art 6, § 1.

That Constitution used the terms citizens, inhabitants, electors, and shows that the words were not understood to be equivalents, but that each conveyed a seperate and

distinct meaning. The word "inhabitant" is used when the subject of apportionment is considered, the word "citizen" with reference to civil rights, other than those of voting. The section which prescribes the qualification of a voter, calls such voter an elector. It was held in *Mills* v. *McCabe*, 44 Ill. 197, that a man who was an inhabitant and had passed through the forms of admission to citizenship in a court not having jurisdiction of that subject, was not a qualified elector under the laws of Illinois. In the *Board of Supervisors* v. *D-aven port*, 44 Ill. 203, the definitions of resident, inhabitant, citizen, were discussed by the Court for the purpose of determining the construction of the Revenue law of Illinois, and it is there stated that "inhabitant" implies a more fixed and permanent abode than "resident" and frequently imparts many privileges and duties which a mere resident could not claim or be subject to. A resident may have his domicile and habitation in an other place and a man may be an inhabitant where he has not a right to vote. The legislature must be supposed to have used the word "inhabitants" in this Statute in the ordinary meaning of the term. If the Court should strike out "inhabitants" and substitute "electors" It would be to change the act and the intention of the Legislature.

A reference to many Acts of the General Assembly of 1869, contained in the same volume with the one under consideration, by which municipal corporations were permitted to subscribe in aid of railroads, will show that all required the question of subscription to be submitted to the "qualified electors" or "legal voters," except two, pages 75, 208, where the submission is required to be made to the legal voters or taxpayers.

It is supposed that the Legislature intended to throw

an additional restraint or protection against towns named in the Act of March 25, 1869, in regard to the creation of a liability for railroad stock. This appears from the fact that the Act required a concurrent action of the corporate authorities and the Supervisor and Town Clerk, while in most of the Acts only the consent of the corporate authorities was required, as in the two instances to which reference is made. The Legislature required the consent of the legal voters and the tax-payers, but in this case the condition imposed by the Legislature was that the proposition should first be submitted to the inhabitants, then to the corporate authorities, and lastly to the Supervisor and Town Clerk.

This court has recently held in *Allen* v. *City of Louisiana*, in construing the Constitution of Missouri, and the Charter of the City of Louisiana, that a subscription could not be made on a vote of two-thirds of the qualified voters, unless the proposition was also submitted at the election under the authority of the City Council and the resident taxpayers of the city and a majority of such tax-payers consented to the subscription.

The court, through the Chief Justice, says: "In the construction of a statute, every word is, if possible, to be given some effect. Nothing is to be stricken out if it can be avoided. It is not to be presumed that the Legislature intended any part to be without meaning. In the light of these maxims of interpretation, the substantial object of this section evidently was to limit the power to subscribe to the stock of railroad companies connecting with the city more than had been done by the Constitution. Under the Constitution—two-thirds vote of the qualified voters, taken under the authority of law would be enough, but under the Charter, the two-third

vote of the qualified voters and a majority vote of the tax payers were both necessary." "As it stands it operates as a Charter protection to the tax payers against the imposition of burdens of this kind, by the qualified voters alone, but of itself, it authorizes no subscription."

So in this case effect must be given to the word inhabitants, and there is no authority for striking it out and substituting the word electors. It is clear that the Legislature intended to require the giving the privilege to all inhabitants who might choose to exercise it, of voting on the question of subscribing for stock. This would include actual legal voters, or those who were aliens or citizens not having the requisite residence to be legal voters. Whether it included women and children is immaterial. It was competent in the Legislature to require the consent of a majority of all persons without distinction of age or sex, to give consent to such a burden. Practically at such an election, even if it included every individual, only those who felt an interest in the question of taxation would be likely to vote.

8. *There was only one election held, and only legal electors voted; the inhabitants did not vote.*

The bond itself recited that it was issued "in accordance with a vote of the *electors* of said township at a special election held June 25, 1870." The Court found "that the *voters* of said town, at an election duly called and held in said town pursuant to the provisions of said act of the 25th day of June, 1870, voted that said town would subscribe." There was no evidence whatever tending to show that the inhabitants voted at that election or at any other.

CONCLUSIONS FROM THESE PROPOSITIONS.

If there was no constitutional act passed by the legis-

lature it would be admitted that the bonds in the hands of the plaintiff below were void, and no recovery could be had. It is clear from the Constitution and decisions construing it in Illinois that a vote of the electors of a township was indispensable to make a subscription after the adoption of the Constitution of 1870, and that such electors constituted the corporate authorities, who alone could create a debt or levy a tax. If the act is construed so as not to provide for an election at which the legal voters could vote on the question of subscription, then there was no valid legislative authority to make a subscription or issue the bonds. There was no election held submitting the proposition of subscribing to the inhabitants of the township, and until that had been done and approved by them, there was no power or authority to make a subscription or issue the bonds. If the act is to be construed as contemplating two elections, one at which the electors could express a voice, and the other at which the inhabitants could vote, then there has not been such a compliance with the act as to confer an authority, because only one election was held and at that only electors voted. For these reasons the conclusion must be that the bonds are absolutely void for want of authority in the persons who signed them and issued them.

II.

THE BOARD OF DIRECTORS DID NOT ACCEPT THE SUBSCRIPTION AS REQUIRED BY THE ACT OF MARCH 25, 1869, AND SO THE SUBSCRIPTION WAS NOT AUTHORIZED UNDER EXISTING LAWS PRIOR TO JULY 2, 1870, WHEN IT WAS MADE IN JANUARY, 1871, AND WAS PROHIBITED BY THE SEPARATE ARTICLE OF THE CONSTITUTION IN REGARD TO MUNICIPAL DEBTS.

way company until in December, 1871. Rec. 17. The bonds were delivered on the 6th day of January, 1871. Rec. 14. Was there authority, at that time in the Supervisor and Clerk to make the subscription and issue the bonds? Was there such authority at the time the prohibitory section of the Constitution was adopted July 2, 1870?

This act is peculiar. An acceptance by the directors of the company was as necessary as the vote of the inhabitants and electors to constitute the authority under this law. When the people prohibited subscriptions the authority was incomplete. The right was not perfected. Therefore, it did not come within the exception, and the bonds issued are void.

Schall v. *Bowman*, 62 Ill. 324.

Township E. Oakland v. *Skinner*, 94 U. S. 256.

Town of Concord v. *Savings Bank*, 92 U. S. 628.

There was not a mere failure to accept, but on the 25th of June, 1870, the railway company caused a new election to be held on a different proposition for the same amount, which was carried by a vote of 58 to 48. Rec. 18. But the bonds were not issued according to this proposition, but that of August 21, 1869. The railway company having thus refused to accept a subscription voted in 1869, on the 25th of June, 1870, seven days before the prohibitory section was adopted, there was no valid authority under existing laws on the 2nd of July, 1870, to make a subscription.

III.

The plaintiff below did not prove or attempt to prove authority in the Supervisor and Clerk in December, [illegible] January, 1871, to sign and deliver the bonds.

He was content to produce the bonds and prove the signatures. That did not entitle him to a judgment.

The Supreme Court of Illinois has decided that all bonds issued by municipal corporations in aid of railroads after July 2, 1870, are *prima facie* void. The Court says, "The bonds are *prima facie* invalid—hence, without such proof, the tax in question would clearly appear to have been levied without authority of law."

Town of Prairie v. *Lloyd*, 97 Ills., 191.

This is now the settled law in Illinois.

Town of Windsor v. *Hallett*, 97 Ill., 211.

Jackson v. *Brush*, 77 Ill., 66.

Middleport v. *Ætna Life Ins. Co.*, 82 Ill., 568.

This rule requires every purchaser of a bond to enquire as to the authority to issue the bonds and the compliance with the conditions precedent. Such bonds do not stand on the same grounds as those issued before the constitution was amended. As they could only be issued in a single case, they have ceased to be commercial paper, and are not entitled to presumptious attaching to such obligations.

IV.

THE QUESTION IS NOT WHETHER THE SUPERVISOR AND CLERK WERE OFFICERS PROPER TO SIGN THE BONDS.

Counsel for defendant in error refer to Town of Windsor vs. Hallett, 97 Ill., 208, to show that the Supervisor and Clerk were proper officers to execute the town bonds. In that case the statute directed "the corporate authorities," after a vote of the people, to execute bonds, and the only question was, who the Legislature intended, should perform the ministerial act of signing bonds, when the legal voters, who constituted the corporate authorities contemplated by the Constitution had decided

to make the subscription. The question here is not one of signing; it is one of authority to create the debt.

The voters could have designated the Supervisor and Clerk under the act of March 25, 1869, to execute the bonds, and if such a provision was in the proposition submitted to vote, then the clerical and ministerial act could be performed by them.

The complaint here is that the act did not direct a vote of the electors, and without such an election, the bonds were void by the provisions of the Constitution.

In the *Windsor* case the Court made this distinction. The opinion says; "There is a broad difference between the creation of a debt and merely executing evidence of the debt. Whilst the voters of the town can alone create the debt, *and are for that purpose the town authorities*, the Supervisor and Clerk may be the authorities who may issue the bonds."

CONCLUSION.

Other points have been discussed by Mr. Story for the plaintiff in error to which I have nothing to add. I have confined myself to the question of liability on the bonds, in any event, and the sufficiency of the proof to entitle the plaintiff below to a judgment.

W. C. GOUDY,

For Plaintiff in Error.

OFFICE SUPREME COURT U.S.
FILED
JAN 18 1881
JAMES H. McKENNEY, Clerk

UNITED STATES OF AMERICA.

SUPREME COURT.

OCTOBER TERM, A. D. 1880.

TOWN OF OHIO
vs.
AUGUSTUS FRANK. } ASSUMPSIT, No. 259.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

J. H. ROBERTS, S. M. CULLOM, T. C. MATHER,
HIS ATTORNEYS.

SPRINGFIELD, ILL.:
H. W. ROKKER'S PRINTING HOUSE.

UNITED STATES OF AMERICA.

SUPREME COURT.

OCTOBER TERM, A. D. 1880.

TOWN OF OHIO
vs.
AUGUSTUS FRANK.

ASSUMPSIT, No. 259.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

This suit is upon matured bonds and coupons of the town of Ohio, in Bureau county, Illinois, issued by it in aid of the Illinois Grand Trunk Railway. The power to issue the securities is contained in the first section of the amendment to the charter of said road, and which amendatory act, by its last section, is constituted a public law, found on pages 307 and 308 of vol. 3, Private Laws of Illinois of 1869; and the first section of which reads as follows:

"SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any city, incorporated

town or township, which may be situated on or near the route of the Illinois Grand Trunk Railway, west of the city of Mendota, *via* Prophetstown to the Mississippi river, may become subscribers to the stock of said railway, and may issue bonds for the amount of such stock so subscribed, with coupons for interest thereto attached, under such limitations and restrictions and on such conditions as they may choose and the directors of said company may approve—the proposition for said subscription having been first submitted to the inhabitants of such city, town or township, and approved by them; and upon application of any ten voters of any city, town or township, as aforesaid, specifying the amount to be subscribed and the conditions of said subscriptions, it shall be the duty of the clerk of such city, town or township, immediately, to call an election in the same manner that other elections for said city, town or township are called, for the purpose of determining whether said city, town or township will subscribe to the stock of said railway; and if a majority of said voters shall be for subscription, then the corporate authorities of said city, town or township, and the supervisor and town clerk of said township, so voting, shall cause said subscription to be made, and upon its acceptance by the directors of said company, shall cause bonds to be issued, in conformity with said vote, which bonds shall not be of less denomination than one hundred dollars, and in no case bear a higher rate of interest than ten per cent: *Providing*, no such election shall be held until at least thirty days' previous notice thereof shall be given in the manner prescribed by law."

We think only a part of the record will be material to be considered in determining this case, because, it was finally submitted to the Circuit Court for trial without the intervention of a jury by stipulation of parties, and the rulings of the Circuit Court upon the evidence, as well as its special findings, and judgment, are all contained on pages from 13 to 28 of the abstract. What precedes that, as shown by the record, seems no longer of any importance.

First in order of consideration, seem to be the objections, preserved of record, to the rulings of the Circuit Court in admitting evidence on part of plaintiff below.

It was conceded that the bonds and coupons offered by him in evidence bore the genuine signatures of the supervisor and clerk, but it was objected that they were not the proper corporate authorities to issue them under the 1st section of the act cited, and therefore the court erred in admitting them in evidence. The Supreme Court of Illinois has, in a recent case, decided this point, in construing a similar law, holding that under a law which authorizes the proper corporate authorities of a township to issue the bonds of a town when so authorized by a vote at an election called for that purpose, *the supervisor and clerk* must be regarded as the proper corporate authorities for the issue and delivery of the bonds.

Town of Windsor vs. *Hallett* (not yet reported;) 2d vol., No. 32. *Western Jurist*, p. 644.

In the case at bar the matter is still plainer, because, the supervisor and clerk are expressly mentioned.

Secondly, it is insisted the court erred in admitting them in evidence, because they were not shown to have been presented, demand made of payment, and notice given the town before suit.

Demand and notice before sueing the town not necessary. 1 Wall., 175. 3 Wall., 327. 2 Dan'l on Neg. Instruments, 2d ed., pp. 467, 472, and authorities there cited.

It is next claimed, by plaintiff in error, that the Circuit Court erred in admitting them in evidence, because a portion of the coupons were detached from the bonds, and the absence of the bonds not accounted for, and that they are not negotiable paper proper to base an action upon.

That these coupons are negotiable paper, and the proper subject of suit without producing the bonds, we refer to 2d vol. Dan'l on N. I., 2d ed., p. 449 (§ 1493) and p. 468 (§ 1508.)

Also, *Mercer Co.* vs. *Hubbard*, 45 Ill., 143.
Johnson vs. *Stark Co.*, 24 Ill., 75.
Smith vs. *Clark Co.*, 54 Mo., 58.
Mercer Co. vs. *Hackett*, 1 Wall., 95.

The foregoing authorities, we think, also answer the fourth exception taken to the ruling of the Circuit Court in admitting the coupons in evidence.

So far as the record of the injunction suit is concerned, which plaintiff in error offered in evidence, it was neutralized by the balance of the record introduced by defendant in error, and which showed dismissal of the suit upon filing of the answer.

As to all the remainder of the evidence offered by plaintiff in error for the purpose of defeating the bonds and coupons, and set forth on pp. 18 and 19 of Abstract, we think it was properly ignored by the Circuit Court in its special findings contained on p. 14 of Abstract, in view of the recitals in the bonds, the provisions of the amendatory act, and the presumptions of law arising from *possession* of the bonds and coupons.

On pp. 15 and 16 it appears plaintiff below produced in evidence the bonds and coupons described in the declaration, and on which judgment was rendered; this, established presumptively, that he was the holder for value, before maturity, and without notice.

Bank of Metropolis vs. *N. E. B'k.*, 1 How. 239.
Chambers Co. vs. *Clews*, 21 Wall., 323, and cases in 16 Pet. and 2 Wall. cited;
2d Dan'l (2d ed.) on N. I., p. 466 (§ 1505.)

If *possession* of these bonds and coupons raises the legal presumption of want of notice, then this presumption stands until overcome by proof of knowledge.

Carpenter vs. *Longan*. 16 Wall., 273.

Consequently, the special finding of the court, that plaintiff below was the holder of said bonds and coupons without any actual notice of any defence whatever against them, was a proper finding, legally deducible from his possession and production of them in evidence, and the record does not show that plaintiff in error has produced any proof of knowledge to overcome this.

The special findings of the vote, its result, and its being in pursuance of the charter and amendment, was based upon the recitals in the bonds.

The supervisor and clerk were, by the first section of the amendatory act, constituted the tribunal to decide whether or no the conditions precedent to their issue of the bonds had been performed. The performance of those conditions is fully recited by them in these bonds, and in the hands of a *bona fide* holder, as defendant in error is, cannot be gainsaid.

See recitals in bond, p. 15 of Abstract.

Authorities on this point:

Coloma vs. *Eaves*, 2 Otto, 491.
Knox Co. vs. *Aspinwall*, 21 How. 159.
Bissell vs. *Jeffersonville*, 24 How. 298.
Mercer Co. vs. *Hackett*, 1 Wall. 93.
Pendleton Co. vs. *Amy*, 13 Wall. 305.
Lynde vs. *County*, 16 Wall. 13.
Marcy vs. *Oswego*, 2 Otto, 641.
Humbolt Tp. vs. *Long*, 2 Otto, 645.

The other special findings of the court are deduced from evidence produced by plaintiff below, and found on page 17 and subsequent pages of the Abstract, the only seriously controverted one, perhaps, being that regarding the constitutionality of the amendatory act.

The plaintiff in error insists it did not constitutionally pass the Senate, the court finding that it did.

The argument that it did not is based upon the Journal entries where, during the different steps of its enactment, it is sometimes called the Grand Trunk Railway, and at others the *Illinois* Grand Trunk Railway.

This difference in the name occurs only in the title, which is no part of the bill.

The constitutional provision said to have been unobserved in its passage is § 23 of art. 3 of the Constitution of 1848, and which requires a bill to be read on three different days, before its passage, unless the House or Senate dispense with the reading.

This was a House bill, introduced as No. 231, and entitled "An act to amend an act entitled 'An act to incorporate the Illinois Crand Trunk Railway.'"

There seems to have been no confusion in its passage through the House, but when it goes to the Senate, whilst the proper number, 231, is always applied to it in the Senate Journal, the word "Illinois" in the title is sometimes inserted, and at other times omitted. For this reason, it is argued that this bill, No. 231, was never read in the Senate three times, and no such bill ever passed that body.

Whether it did or did not, is a question of *identity*.

The Senate Journal shows that H. B. No. 231, was read as required by the provision in question. Whether or not it was each time read by the correct title is another question.

The reading of and passage of *the bill* is the main thing. The reading or not of the title is immaterial.

The numbers on bills is a means of identifying them just as much as the titles, and following the number of this bill, 231, through the Journals of both houses, there can be no doubt left but that *the bill* was read, and passed both houses as required by the Constitution.

Mr. Fuller, in reporting H. B. No. 231 back from the Senate Committee on Railroads, and recommending its passage as amended, correctly reported its title as the *Illinois* Grand Trunk Railway, and when it was thereupon read a third time and passed by yeas and noes, *title to be as aforesaid*, the words "as aforesaid" would refer to the correct title as reported by Mr. Fuller. (See page 22 of Abstract.)

This occasional confusion in the name in the title might easily be attributable to an error of the clerk in making the Journal entries.

The Supreme Court of Illinois has said the evidence, to impeach a law as unconstitutional, must be clear and convincing. A mere doubt is not sufficient.

We insist the Journal entries, as shown on pages from 19 to 28 of Abstract, do not raise a respectable doubt as to the constitutional passage of this law. For a case precisely in point, we refer the Court to

Larrison vs. *P., A. & D. R. R. Co.*, 77 Ill., 17.

We respectfully insist, then, that the special findings of the Circuit Court, on p. 14 of the Abstract, were entirely right, and deducible from the evidence disclosed by the record, the provisions of the amendatory charter, the recitals in the bonds, and the presumptions of law arising from *possession* of the bonds and coupons by plaintiff below.

If the special findings were right, that defendant in error was entitled to judgment thereon is too plain for serious argument, or citation of further authorities.

Respectfully submitted for Defendant in Error, by

J. H. ROBERTS,
S. M. CULLOM,
T. C. MATHER,
His Attorneys.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 278.

THE SHIP CIVILTA, HER TACKLE, &c., CASIMIR CASULICH, CLAIMANT, APPELLANT,

vs.

AUGUSTUS B. PERRY ET AL.

FILED OCTOBER 15, 1878.

No. 296.

THE STEAM-TUG RESTLESS, HER ENGINES, &c., JOHN G. BAKER, CLAIMANT, APPELLANT,

vs.

AUGUSTUS B. PERRY ET AL.

FILED OCTOBER 19, 1878.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.